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CENTRAL DIST. OF CALIF.
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BY: _____

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12 Attorneys for Defendants
13 CONSTELLATION BRANDS, INC. and
14 CONSTELLATION WINES U.S., INC.

15 UNITED STATES DISTRICT COURT
16 CENTRAL DISTRICT OF CALIFORNIA

17 MARK ZELLER, on behalf of himself and
18 others similarly situated,

19 Plaintiff,

20 v.

21
22 CONSTELLATION BRANDS, INC.;
23 CONSTELLATION WINES U.S. INC.;
24 SICA CAVES DU SIEUR D'ARQUES;
25 AIMERY SIEUR D'ARQUES;
26 VIGNERON DU SIEUR D'ARQUES;
27 DOMAINE ET VIGNOBLE DU SUD,
28 formerly known as Société Ducasse; and
DOES 1 to 50 Inclusive,

Defendants.

Case No.:

Los Angeles Superior Court Case No.
BC443338

**NOTICE OF REMOVAL OF CIVIL
ACTION FROM STATE COURT
PURSUANT TO 28 U.S.C. §§ 1332,
1441, AND 1446**

[Jurisdiction Pursuant to Class Action
Fairness Act and Diversity]

Trial Date: None Set

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE CENTRAL DISTRICT OF CALIFORNIA, TO PLAINTIFF, AND TO
PLAINTIFF'S ATTORNEY OF RECORD:**

PLEASE TAKE NOTICE that Defendants Constellation Brands, Inc. and Constellation Wines U.S., Inc. (collectively, "Constellation") hereby give notice of the removal of this civil action from the Superior Court of the State of California for the County of Los Angeles to the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 1332(a), 1332(d), 1441(b), and 1446(b) on the following grounds:

I. STATEMENT OF JURISDICTION

1. This Court has original jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), Pub. L. No. 109-2, 119 Stat. 4. *See* 28 U.S.C. § 1332(d). Plaintiff is a citizen of California, Defendants are citizens of Delaware, New York, or France, and the amount in controversy for the putative class members in the aggregate exceeds \$5,000,000, exclusive of interest and costs.

2. This Court also has original jurisdiction over this action pursuant to traditional principles of diversity jurisdiction. *See* 28 U.S.C. § 1332(a). Plaintiff is a citizen of California, Defendants are citizens of Delaware, New York, or France, and the amount in controversy as to one or more Defendants exceeds \$75,000, exclusive of interest and costs.

II. VENUE

3. Despite the venue indicated on the caption of the original Complaint, this action was initially filed in Los Angeles Superior Court. Venue properly lies in the United States District Court for the Central District of California pursuant to 28 U.S.C. §§ 84(a), 1391(a), and 1441(a).

III. REMOVAL IS TIMELY

4. Pursuant to U.S.C. § 1446(b), a notice of removal of a civil action must be filed within thirty days after service of the summons and complaint. *See, e.g., Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999).

5. Plaintiff filed his original Complaint on August 10, 2010 and first served it and a summons on Constellation on October 12, 2010. This Notice of Removal is being filed on November 10, 2010, within thirty days after such service. Accordingly, this Notice of Removal is timely.¹

IV. PLEADINGS, PROCESS, and ORDERS

6. A true and correct copy of the Complaint in this action is attached as Exhibit A.

7. True and correct copies of the remaining papers on file in the Los Angeles Superior Court in Case No. BC 443338 are attached as Exhibit B.

8. To the best of Constellation's knowledge, no further process, pleadings, or orders relating to this case have been filed in Los Angeles Superior Court.

V. THE OTHER DEFENDANTS NEED NOT JOIN IN THIS REMOVAL

9. "[A] party not served need not be joined" in a notice of removal. *Salveson v. Western States Bankcard Ass'n.*, 731 F.2d 1423, 1429 (9th Cir. 1984);

¹ If Plaintiff attempts to challenge the amounts in controversy in this Notice of Removal, Constellation reserves the right to argue in response that the time to remove therefore will not have expired because Plaintiff will have established that the allegations of the complaint failed adequately to specify those amounts. *See, e.g., Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 694 (9th Cir. 2005). That having been said, application of the sworn facts supplied by Constellation to the current allegations ("at least hundreds of thousands bottles" of wine were sold "nationwide to at least tens of thousands of class members," who are "[a]ll residents of the United States who purchased one or more bottles of wine" from the Constellation Defendants over a four year period, Complaint ¶¶ 49, 51) establishes that the amounts in controversy support removal.

accord, e.g., *Community Bldg. Co. v. Maryland Cas. Co.*, 8 F.2d 678, 679 (9th Cir. 1925); *Mitchell v. Paws Up Ranch, LLC*, 597 F. Supp. 2d 1132, 1135 (D. Mont. 2009).

10. Constellation has undertaken “reasonable diligence,” *Lopez v. BNSF Ry. Co.*, 614 F. Supp. 2d 1084, 1089 (E.D. Cal. 2007), in attempting to ascertain whether any other Defendants have been served in this action.

11. The state court’s docket lists proofs of service only for Constellation. A copy of that docket, dated November 9, 2010, is attached as Exhibit C. *See also* Declaration of Christopher M. Mason dated November 9, 2010 (“Mason Dec.”) ¶ 4.

12. Constellation has made due inquiry of counsel for the other named Defendants. None of them has indicated that their clients have been served with a summons and complaint in this action. Mason Dec. ¶¶ 2-3. Accordingly, none of the other named Defendants need join in this removal for purposes of traditional diversity jurisdiction, nor is their consent required. *See, e.g., Salveson*, 731 F.2d at 1429; accord, e.g., *Emrich v. Touche Ross & Co.*, 846 F.2d 1190, 1193 n.1 (9th Cir. 1988).

13. No consent by any defendant other than the removing defendant itself is required for removal pursuant to CAFA. *See* 28 U.S.C. § 1453(b).

V. JURISDICTION PURSUANT TO CAFA

14. This Court has jurisdiction over this action pursuant to CAFA, 28 U.S.C. § 1332(d), and this case may be removed pursuant to the provisions of 28 U.S.C. § 1441(a), because it is a civil class action in which the proposed class contains at least 100 members; Defendants are not states, state officials, or other governmental entities; the total amount in controversy for all class members exceeds \$5,000,000; and there is diversity between at least one class member and Defendants.

A. The Proposed Class Contains At Least 100 Members

15. Plaintiff seeks to represent a class of “[a]ll residents of the United States who purchased one or more bottles of 2005, 2006, 2007, or 2008 Constellation Brand wine labeled as ‘Pinot Noir’ (‘Proposed Class’),” Complaint ¶ 49, and therefore necessarily include wholesale customers of Constellation.

1 16. Plaintiff asserts that wine labeled as “Pinot Noir” by Constellation was
2 sold to “at least tens of thousands of class members.” Complaint ¶ 51.

3 **B. The Defendants Are Not Governmental Entities**

4 17. Plaintiff alleges that Defendants are business entities, not states, state
5 officials, or other governmental entities. Complaint ¶¶ 10-15.

6 **C. The Amount In Controversy Exceeds \$5,000,000**

7 18. The Complaint does not allege any amount in controversy. This failure
8 does not deprive the Court of jurisdiction. *See, e.g., White v. J.C. Penney Life Ins. Co.*,
9 861 F. Supp. 25, 26 (S.D. W.Va. 1994); *Singer v. State Farm Mut. Auto. Ins. Co.*,
10 116 F.3d 373, 376 (9th Cir. 1997); *Sanchez v. Monumental Life Ins. Co.*, 102 F.3d 398,
11 404 (9th Cir. 1996).

12 19. Constellation sold more than 5,500,000 bottles of Constellation wine
13 labeled “French Pinot Noir” to wholesalers in 2008 alone. Declaration of Dan Gaiek
14 dated November 9, 2010 (“Gaiek Dec.”) ¶ 5.

15 20. While the cost of Constellation wine labeled “Pinot Noir” varied from
16 label to label and from year to year, the least expensive such bottles sold during the
17 2005 to 2008 period sold for a wholesale price of approximately \$3.00. Gaiek Dec.
18 ¶ 6.

19 21. While Constellation believes that no person has any claim against it in any
20 amount in this case, the amount in controversy necessarily alleged in the Complaint,
21 even if only Constellation’s 2008 sales were considered, and even if those sales were
22 considered at only the lowest wholesale price per bottle during the period 2005 to
23 2008, exceeds \$16,500,000. Gaiek Dec. ¶ 7.

24 **D. Minimal Diversity Exists Under CAFA**

25 22. CAFA requires for purposes of diversity of citizenship only that at least
26 one plaintiff have citizenship different from that of any one defendant. *See* 28 U.S.C.
27 §§ 1332(d)(2)(A), 1453.

23. As a natural person residing in California, Complaint ¶ 7, Plaintiff is a citizen of this State. *See Kantor v. Wellesley Galleries, Ltd.*, 704 F.2d 1088 (9th Cir. 1983); *Kanter v. Warner-Lambert Co.*, 265 F.3d 853, 857 (9th Cir. 2001).

24. For diversity purposes, a corporation “shall be deemed a citizen of any State by which it has been incorporated and of the State where it has its principal place of business.” 28 U.S.C. § 1332(c)(1). This “is best read as referring to the place where a corporation’s officers direct, control, and coordinate the corporation’s activities. . . . [I]n practice it should normally be the place where the corporation maintains its headquarters – provided that the headquarters is the actual center of direction, control, and coordination, i.e., the ‘nerve center’” *Hertz Corp. v. Friend*, 130 S. Ct. 1181, 1192 (2010).

25. Defendant Constellation Brands, Inc. is incorporated in Delaware, Complaint ¶ 10, and its headquarters, from which its corporate officers direct and control its activities, is in New York, Gaiek Dec. ¶ 3.

26. Defendant Constellation Wines U.S., Inc. is incorporated in New York, Complaint ¶ 11, and its headquarters, from which its corporate officers direct and control its activities, is in New York, Gaiek Dec. ¶ 4.

27. Defendant Aimery Sieur d’Arques is a French entity with its principal place of business in France. Complaint ¶ 12.

28. Defendant SICA Caves du Sieur d’Arques is a French entity with no offices in the United States. Complaint ¶ 13.

29. Defendant Vigneron du Sieur d’Arques is a French entity with its principal place of business in France. Complaint ¶ 14.

30. Domaine et Vignoble du Sud (formerly known as Société Ducasse) is a French entity with its principal place of business in France. Complaint ¶ 15.

31. Defendants Does 1 through 50 are fictitious. Pursuant to 28 U.S.C. § 1441(a), the citizenship of defendants sued under fictitious names must be disregarded for the purposes of determining diversity jurisdiction and cannot destroy

the diversity of citizenship between the parties in this action. *See Newcombe v. Adolf Coors Co.*, 157 F.3d 686, 690-91 (9th Cir. 1998).

32. Because Plaintiff is a citizen of California, a State different from the State of citizenship of any of the Defendants, minimal diversity necessarily exists.

33. As the named plaintiff is diverse from at least one Defendant, and the amount in controversy exceeds \$5,000,000, removal of this action under CAFA is proper.

VI. TRADITIONAL DIVERSITY JURISDICTION EXISTS IN THIS CASE

This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(b), and this case may be removed pursuant to the provisions of 28 U.S.C. § 1441(a), because it is a civil class action in which the Plaintiff's citizenship is diverse from the citizenship of all Defendants and because the amount in controversy between at least one putative class member and at least one Defendant exceeds \$75,000.

A. Complete Diversity Exists Between the Parties

34. Because none of the named Defendants is a citizen of California, and Plaintiff is a citizen only of California, complete diversity exists for purposes of traditional diversity jurisdiction pursuant to 28 U.S.C. § 1332 in this case. The citizenship of absent proposed class members is not relevant to this inquiry. *E.g.*, *Snyder v. Harris*, 394 U.S. 332, 340 (1969).

B. The Amount in Controversy Exceeds \$75,000

35. For purposes of amount in controversy, only one proposed class member's claim must meet the \$75,000 jurisdictional minimum for traditional diversity jurisdiction. *See Abrego Abrego v. Dow Chem. Co.*, 443 F.3d 676, 689 (9th Cir. 2006).

36. In 2008, one wholesale customer, Southern Wines & Spirits of Florida, purchased 14,336 cases of Constellation Woodbridge brand French Pinot Noir (1.5 Liter) at \$45.31 per case, for a total of \$649,654. Gaiek Dec. ¶ 8.

1 37. In 2008, another wholesale customer, Charles Gilman & Sons, Inc. of
2 Massachusetts, purchased 7,232 cases of Constellation Woodbridge brand French
3 Pinot Noir (1.5 Liter) at \$48.70 per case for a total of \$352,198. Gaiek Dec. ¶ 9.

4 38. At least thirty other wholesale customers purchased \$75,000 or more of
5 Constellation wine labeled "French Pinot Noir" in 2008, for a total of over \$2,250,000.
6 Gaiek Dec. ¶ 10.

7 39. While Constellation believes that no person has any claim against it in any
8 amount in this case, the amount in controversy necessarily alleged in the Complaint
9 exceeds \$75,000 as to one or more members of the putative class.

10 **VII. NOTICE OF PLAINTIFF AND STATE COURT**

11 40. Contemporaneous with the filing of this Notice of Removal in the United
12 State District Court for the Central District of California, Constellation is giving
13 written notice of such filing to Plaintiff's Counsel of Record, Eric B. Kingsley of
14 Kingsley & Kingsley, APC and Michael A. Caddell of Caddell & Chapman.
15 Constellation is also filing a copy of this Notice of Removal with the Clerk of the Los
16 Angeles Superior Court.

17
18 Dated: November 10, 2010

19
20 Respectfully Submitted,

21 NIXON PEABODY LLP

22
23 By: 

24 Thaddeus J. Stauber, Esq.

25 Bruce E. Copeland, Esq.

26 Attorneys for Defendants

27 CONSTELLATION BRANDS, INC. and

28 CONSTELLATION WINES U.S., INC.

EXHIBIT A

COPY

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12 Attorneys for Plaintiffs

CONFIRMED COPY
Superior Court of California
County of Napa

AUG 10 2010

John A. Clarke, Executive Officer/Clerk
By RUGENALOPREZ Deputy

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 FOR THE COUNTY OF NAPA

17 MARK ZELLER, on behalf of
18 of himself and others similarly situated,
19 Plaintiff,

20 v.

21 CONSTELLATION BRANDS,
INC.; CONSTELLATION WINES U.S.,
22 INC.; SICA CAVES DU SIEUR
D'ARQUES; AIMERY SIEUR
23 D'ARQUES; VIGNERON DU SIEUR
D'ARQUES; DOMAINE ET VIGNOBLE
24 DU SUD, formerly known as Société
Ducasse; and DOES 1 to 50 Inclusive,

Case No.:

BC443338

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE UNFAIR COMPETITION LAW (Business and Professions Code §17200 *et seq.*)
- (2) VIOLATION OF THE FALSE ADVERTISING LAW (Business and Professions Code §17500 *et seq.*)
- (3) FRAUD
- (4) FRAUDULENT CONCEALMENT AND NONDISCLOSURE
- (5) NEGLIGENT MISREPRESENTATION
- (6) EXPRESS WARRANTY
- (7) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- (8) MONEY HAD AND RECEIVED

JURY TRIAL DEMANDED

28 Plaintiff, Mark Zeller ("Plaintiff"), complaining of the above-named Defendants, alleges as

1 follows, which allegations are upon information and belief insofar as they pertain to the conduct of the
2 Defendants:

3 I

4 INTRODUCTION

5 1. This is a civil action brought under the Unfair Competition Law (Business and Professions
6 Code section 17200 *et seq.*) and the False Advertising Law (Business and Professions Code section
7 17500 *et seq.*) to redress Defendants' unlawful, unfair, and fraudulent business acts and practices and
8 deceptive advertising in the marketing and sale of its falsely labeled Pinot Noir to consumers. Millions
9 of bottles of red wine labeled, marketed, distributed, and sold by Defendants as Pinot Noir, were, in fact,
10 not Pinot Noir wine.

11 2. Upon information and belief, Defendants labeled, marketed, and sold millions of bottles
12 labeled as "Pinot Noir" under the label Woodbridge by Robert Mondavi, among many others. These
13 bottles of wine, falsely labeled as premium Pinot Noir wine, were illegally cut with cheaper Syrah and
14 Merlot grapes.

15 II

JURISDICTION AND VENUE

16 3. Each of the Defendants has headquarters in, or does substantial business in, the State of
17 California.

18 4. Each of the business acts and practices described herein was performed, in whole or in part,
19 in the State of California.

20 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
21 Procedure §395.

22 6. Defendants CONSTELLATION BRANDS, INC.; CONSTELLATION WINES U.S.,
23 INC.; SICA CAVES DU SIEUR D'ARQUES; AIMERY SIEUR D'ARQUES; VIGNERON DU SIEUR
24 D'ARQUES; and DOMAINE ET VIGNOBLE DU SUD, formerly known as Société Ducasse, operate
25 in California, conduct substantial business in California, and sell their fraudulently labeled Pinot Noir
26 wines nationwide, including within the State of California and the County of Napa. The unlawful,
27 unfair, and fraudulent business acts and practices and false advertising alleged herein have a direct
28 effect on Plaintiff and those similarly situated within the United States, including the State of California

1 and Napa County.

2 **III**
3 **PARTIES**

4 **A. Plaintiff**

5 7. Plaintiff MARK ZELLER is a resident of California.

6 8. Plaintiff ZELLER purchased wine manufactured and distributed by Defendants which was
7 labeled as Pinot Noir wine, including Woodbridge by Robert Mondavi, among other Constellation
8 labels.

9 9. Defendants failed to provide Plaintiff and all others similarly situated with Pinot Noir wine
10 despite the fact that the wine was labeled, advertised and sold as Pinot Noir wine. Instead, Defendants
11 illegally provided Plaintiff and others similarly situated with an inferior wine made from less expensive
12 merlot and syrah grapes.

13 **B. Defendants**

14 10. Defendant CONSTELLATION BRANDS, INC. ("Constellation Brands") is a Delaware
15 corporation operating in California. As one of its three main business units, Constellation Brands
16 operates Constellation Wines U.S., Inc. Constellation Brands owns and operates multiple locations in
17 the State of California. Its corporate address is 207 High Point Drive, Building 100, Victor, New York,
18 14564. Constellation Brands has marketed and sold bottles of falsely labeled bottles of wine to Plaintiff
19 and similarly situated persons throughout the State of California and nationwide.

20 11. Defendant CONSTELLATION WINES U.S., INC. ("Constellation Wines") is a New
21 York corporation operating in California. Constellation Wines owns and operates multiple locations
22 in the State of California, including offices in San Francisco and St. Helena, California. Constellation
23 Wines' corporate address is 207 High Point Drive, Building 100, Canandaigua, New York, 14564.
24 Constellation Wines has marketed and sold bottles of falsely labeled bottles of wine to Plaintiff and
25 similarly situated persons throughout the State of California and nationwide. Constellation Brands and
26 Constellation Wines are collectively referred to herein as "Constellation."

27 12. Defendant AIMERY SIEUR D'ARQUES ("Aimery SD") is a French entity that sells
28

1 wine it obtains from its affiliated Sieur D'Arques companies. Defendant AIMERY sold the fake Pinot
 2 Noir wine that Constellation in turn sold to domestic consumers. Aimery's principle place of business
 3 is located at Avenue du Carcassonne BP 30, 11300 Limoux, France.

4 13. Defendant **SICA CAVES DU SIEUR D'ARQUES** ("SICA Caves SD") is a French entity
 5 that blended and bottled the wine that was used to make the fake Pinot Noir wine sold by Constellation.
 6 SICA Caves SD's principle place of business is located at Avenue du Carcassonne BP 30, 11300
 7 Limoux, France.

8 14. Defendant **VIGNERON DU SIEUR D'ARQUES** ("Vigneron SD") is a French entity that
 9 grew the grapes and produced the wine, or portions of it, that were used to make the fake Pinot Noir
 10 wine sold by Defendants Constellation. Defendant's principle place of business is located at Avenue
 11 du Carcassonne BP 30, 11300 Limoux, France. The three Sieur D'arques companies (Aimery SD,
 12 SICA Caves SD, and Vigneron SD are collectively referred to herein as "SD".

13 15. Defendant **DOMAINE ET VIGNOBLE DU SUD**, formerly known as Société Ducasse
 14 ("Ducasse"), is a French entity that brokered the sale of grapes to Defendants Sieur D'Arques and/or
 15 Constellation. Defendant's principle place of business is located at 23 Quai Bellevue 11000,
 16 Carcassonne, France.

17 16. The true names and capacities, whether individual, corporate, associate, or otherwise, of
 18 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore
 19 sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and
 20 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
 21 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court
 22 to amend this Complaint to reflect the true names and capacities of the defendants designated
 23 hereinafter as DOES when such identities become known.

24 17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
 25 all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
 26 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
 27 attributable to the other Defendants.

28

IV

OVERVIEW OF APPLICABLE LAW

A. The Unfair Competition Law

18. The Unfair Competition Law ("UCL") prohibits "unfair competition," which is defined by Business and Professions Code §17200 as including "any unlawful, unfair or fraudulent business act or practice . . ."

19. As the California Supreme Court has noted, the UCL's "purpose is to protect both consumers and competitors by promoting fair competition in commercial markets for goods and services." (*Kasky v. Nike Inc.* (2002) 27 Cal.4th 939, 949.) The UCL is broadly worded, leading the California Supreme Court to observe that the UCL "was intentionally framed in its broad, sweeping language, precisely to enable judicial tribunals to deal with the innumerable new schemes which the fertility of man's invention would contrive." (*Barquils v. Merchants Collection Association* (1972) 7 Cal.3d 94, 112 [citations and internal quotation marks omitted].) The UCL contains no express intent, knowledge, or negligence requirement, and therefore has been construed as "impos[ing] strict liability." (*Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1333.)

20. "Because Business and Professions Code §17200 is written in the disjunctive, it establishes three varieties of unfair competition – acts or practices which are unlawful, or unfair, or fraudulent." (*Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647.)

21. The unlawful prong of §17200 proscribes "anything that can properly be called a business practice and that at the same time is forbidden by law." (*People v. McKale* (1979) 25 Cal.3d 626, 632; see also *Podolosky v. First Healthcare Corp.*, *supra*, 50 Cal.App.4th at p. 647 ["Virtually any state, federal or local law can serve as the predicate for an action under Business and Professions Code section 17200."]; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839 ["The 'unlawful' practices prohibited by §17200 are any practices forbidden by law, be it civil or criminal, federal, state, or municipal, statutory, regulatory, or court-made."].)

22. The *unfair* prong of §17200 "provides an independent basis for relief"; in other words, "[i]t is not necessary for a business practice to be 'unlawful' in order to be subject to an action under the

1 unfair competition law." (*Smith v. State Farm Mutual Automobile Insurance Co.* (2001) 93 Cal.App.4th
 2 700, 718.) "In general the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices. . .'
 3 [Citation.]" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861,
 4 887.)

5 23. The courts of this State have adopted several tests for determining whether a business act
 6 or practice is *unfair*:

7 24. A business practice is unfair "when that practice 'offends an established public policy or
 8 when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious.'" (*State*
 9 *Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102 [quoting *People v.*
 10 *Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 530].)

11 25. Another "test of whether a business practice is unfair involves an examination of [that
 12 practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the
 13 alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the
 14 gravity of the harm to the alleged victim. . ." (*State Farm Fire & Casualty Co. v. Superior Court, supra*,
 15 45 Cal.App.4th at pp. 1103-1104.)

16 26. It also is an unfair business practice when the defendant's conduct "threatens an incipient
 17 violation of [a law], or violates the policy or spirit of [a law] because its effects are comparable to or
 18 the same as a violation of the law, or otherwise significantly threatens or harms competition."
 19 (*Cel-Tech Communication, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187; see
 20 also *Scripps Clinic v. Superior Court (Thompson)* (2003) 108 Cal.App.4th 917, 940.)

21 27. More recently, one Court of Appeal has fashioned a test for determining whether a practice
 22 is unfair based upon section 5 of the Federal Trade Commission Act (United States Code, title 15,
 23 section 41 *et seq.*). Under this test, "[a]n act or practice is unfair if [1] the consumer injury is
 24 substantial, [2] is not outweighed by any countervailing benefits to consumers or to competition, and
 25 [3] is not an injury the consumers themselves could reasonably have avoided." (*Daugherty v. American*
 26 *Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839 [bracketed numbers added].)

27 28. The fraudulent prong of §17200 "affords protection against the probability or likelihood
 28

1 as well as the actuality of deception or confusion." (*Payne v. United California Bank* (1972) 23
 2 Cal.App.3d 850, 856.) "The test is whether the public is likely to be deceived." (*South Bay Chevrolet*
 3 *v. General Motors Acceptance Corp.*, *supra*, 72 Cal.App.4th at p. 888.)

4 **B. The False Advertising Law**

5 29. Business and Professions Code §17500, a provision of the False Advertising Law ("FAL"),
 6 provides in relevant part that it is: (a) "unlawful for any person, firm, corporation or association," (b)
 7 "to make or disseminate or cause to be made or disseminated before the public in this state," (c) "in any
 8 newspaper or other publication, or any advertising device, . . . or in any other manner or means," (d) "any
 9 statement, concerning . . . [the performance of] services. . . which is untrue or misleading," (e) "which is
 10 known, or which by the exercise of reasonable care should be known, to be untrue or misleading," and
 11 (f) "with intent directly or indirectly to . . . perform services, professional or otherwise. . . or to induce the
 12 public to enter into any obligation relating thereto. . ."

13 30. The False Advertising Law applies broadly to commercial speech and includes within its
 14 purview not merely advertisements specific to products or services being sold, but also to more general
 15 statements intended to burnish a corporation's image in the eyes of the public. (See *Kasky v. Nike, Inc.*,
 16 *supra*, 27 Cal.4th 939.)

17 31. A statement is "untrue or misleading" for purposes of §17500 "if members of the public
 18 are likely to be deceived." (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.)

19 32. While §17200 can be violated with no showing that the defendant acted intentionally,
 20 knowingly, or negligently, §17500 requires proof that the statement was "known, or which by the
 21 exercise of reasonable care should be known, to be untrue or misleading" (Business and Professions
 22 Code §17500), which creates a negligence standard. (See *Khan v. Medical Board* (1993) 12
 23 Cal.App.4th 1834, 1846.) Under this standard, a seller has "a duty of investigation," such that the
 24 seller's "failure to verify and investigate breaches the duty of care when facts are present which would
 25 put a reasonable person on notice of possible misrepresentations." (*People v. Superior Court (Forest*
 26 *E. Olson, Inc.*) (1982) 137 Cal.App.3d 137, 139.)

27 33. A violation of §17500 may be the subject of a civil action seeking an injunction and/or
 28

1 restitution. (Business and Professions Code §§17535 and 17536.)

2 V

3 **FACTUAL BACKGROUND**

4 34. Constellation's portfolio of wine labels includes many popular U.S. wine brands, including:
5 Woodbridge by Robert Mondavi, Clos du Bois, Black Box, Robert Mondavi Private Selection,
6 Ravenswood, Blackstone, Toasted Head, Franciscan Estate, Mount Veeder Winery, Robert Mondavi
7 Winery, Simi, Estancia, Ravenswood, Hogue and Rex Goliath.

8 35. Plaintiff has purchased numerous bottles of Pinot Noir sold under several of
9 Constellation's labels, including Woodbridge by Robert Mondavi.

10 36. Constellation's wine, labeled as "Pinot Noir," was illegally cut with cheaper Merlot and
11 Syrah grapes such that it could not properly be called Pinot Noir under domestic and foreign wine
12 labeling laws.

13 37. A court in Carcassonne, France convicted twelve wine traders and wine makers in the
14 Languedoc-Roussillon region of France (including Claude Courset of the Ducasse wine trading
15 company and SD) of selling Constellation the fake Pinot Noir wine. The French court found the
16 scheme, which lasted from January 2006 to March 2008, to be organized, structured, and to have
17 involved every level in the supply chain.

18 38. Constellation knew that the wine it was selling as Pinot Noir did not have the content of
19 Pinot Noir listed on its labels, nor the content of Pinot Noir required to label a wine as Pinot Noir.

20 39. Constellation is one of the largest and most sophisticated wine manufacturers and sellers
21 in the world and its wine experts can easily examine the wine and discern from its characteristics the
22 difference between wine made from Pinot Noir and wine made from inferior, less expensive grapes.

23 40. As one of the largest and most sophisticated purchasers of wine, Constellation certainly
24 knew that the volume of wine being sold by Defendants Sieur d'Arques and Ducasse as Pinot Noir wine
25 grown in the Languedoc-Roussillon region exceeded the Languedoc-Roussillon region's production of
26 Pinot Noir.

27 41. Plaintiff purchased Defendants' wine labeled as Pinot Noir believing that the bottles
28

1 actually contained Pinot Noir wine as defined by foreign and domestic regulations.

2 42. Plaintiff paid a premium for the wine based on the belief that it was made from more
3 expensive Pinot Noir grapes, and not cheaper Syrah and Merlot grapes. Had Plaintiff known the wine
4 was made from a less expensive grape, he would not have purchased it.

5 43. Defendants made uniform material affirmative misrepresentations and uniformly concealed
6 material information in the marketing, advertising, and sale of the wine labeled as Pinot Noir.

7 44. Defendants represented and warranted to Plaintiff and all Class members that its wine
8 labeled as "Pinot Noir" was made entirely, or almost entirely, from Pinot Noir grapes, as is required by
9 federal regulations, which require wine labeled as "Pinot Noir" to be comprised of at least 85% wine
10 from Pinot Noir grapes.

11 45. Wine sold in the United States must have labeling pre-approved by the U.S. Treasury
12 Department's Alcohol and Tobacco Tax and Trade Bureau (the "TTB"). The TTB has strict rules
13 regarding the varietal designation on a wine label. When the name of a single grape variety is used as
14 the type designation on a wine label (as in the case of Pinot Noir), at least 75% of the wine must be
15 derived from grapes of that variety. 27 C.F.R. §4.23(b)

16 46. This regulation applies to any entity engaged in business as a producer, rectifier, blender,
17 importer, or wholesaler, directly or indirectly or through an affiliate, who sell or ship or deliver for sale
18 or shipment, or otherwise introduce in interstate or foreign commerce, or receive therein, or remove
19 from customs custody, any wine in containers. Id. § 4.30(a).

20 47. Accordingly, Defendants violated this regulation by selling wine labeled as Pinot Noir that
21 contained less than 75% wine made from Pinot Noir grapes.

22 48. Defendants unfairly profited by selling the mislabeled wine as Pinot Noir, which permitted
23 Defendants to charge and obtain a higher price for the wine than if Defendants had properly and
24 accurately labeled the wine as plain red table wine composed primarily of cheaper Merlot and Syrah
25 grapes.

26 ///

27 ///

28

VI

CLASS ACTION ALLEGATIONS

49. Plaintiff is seeking to represent a class of similarly situated persons defined as follows:

All residents of the United States who purchased one or more bottles of 2005, 2006, 2007, or 2008 Constellation Brand wine labeled as "Pinot Noir" ("Proposed Class").

50. This action is brought as a class action and may properly be so maintained pursuant to the provisions of the Code of Civil Procedure §382. Plaintiff reserves the right to modify the class definition and the class period based on the results of discovery pursuant to Rule 3.765 of the California Rules of Court.

A. Numerosity

51. The potential members of the proposed class as defined are so numerous that joinder of all the members of the proposed class is impracticable. While the precise number of proposed class members has not been determined at this time, Plaintiff is informed and believes that at least hundreds of thousands of bottles of Constellation Brand wine labeled as "Pinot Noir" were sold nationwide to at least tens of thousands of class members..

52. Plaintiff alleges Defendants' records would provide information as to the total number of bottles of falsely labeled wine sold. Joinder of all members of the proposed class is not practicable.

B. Commonality

53. There are questions of law and fact common to the proposed class that predominate over any questions affecting only individual class members. These common questions of law and fact include, without limitation:

a. Whether Defendants sold wine labeled as "Pinot Noir," which was not Pinot Noir wine;

b. Whether Defendants made uniform material affirmative misrepresentations in its marketing, advertising and sale of the wine labeled as Pinot Noir;

c. Whether Defendants uniformly concealed material information in its marketing, advertising and sale of wine labeled as Pinot Noir;

- 1 d. Whether Plaintiff and the Class members were damaged as a result of purchasing
2 the mislabeled wine; and
- 3 e. Whether Defendants improperly profited as a result of mislabeling the wine.
- 4 f. Whether the Pinot Noir content was a material fact reasonable purchasers would
5 have considered in deciding whether to purchase wine labeled as Pinot Noir;
- 6 g. Whether Defendants knew and/or were reckless in not knowing of the true content
7 of the wine;
- 8 h. Whether Defendants fraudulently concealed from and/or failed to disclose to
9 Plaintiff and the Class members the true content of the wine;
- 10 i. Whether Defendants had a duty to Plaintiff and the Class members not to
11 misrepresent the content of the wine on the label;
- 12 j. Whether Defendants represented that the wine labeled as Pinot Noir had
13 characteristics it did not actually have, in violation of the Consumer Legal Remedies Act;
- 14 k. Whether Defendants represented that the wine labeled as Pinot Noir was of a
15 particular standard, quality or grade when it was of another, in violation of the Consumer Legal
16 Remedies Act;
- 17 l. Whether Defendants advertised wine labeled as Pinot Noir wine with the intent
18 not to sell it as advertised, in violation of the Consumer Legal Remedies Act;
- 19 m. Whether Defendants' active concealment of and/or failure to disclose the true
20 nature of wine labeled as Pinot Noir wine was likely to mislead or deceive, and therefore fraudulent,
21 within the meaning of Bus. & Prof. Code § 17200, et seq.;
- 22 n. Whether Defendants' active concealment of and/or failure to disclose the true
23 nature of the wine labeled as Pinot Noir is unfair within the meaning of Bus. & Prof. Code § 17200, et
24 seq.;
- 25 o. Whether Defendants' warranties, marketing, advertisements and other express
26 representations that wine labeled as Pinot Noir had certain characteristics and/or was of a certain quality
27 or standard violated Bus. & Prof. Code § 17500, et seq.;
- 28

1 p. Whether Defendants breached their express warranty that its wine labeled as Pinot
2 Noir contained a certain percentage of Pinot Noir;

3 q. Whether Plaintiff and the Class members are entitled to compensatory damages,
4 and the amount of such damages;

5 r. Whether, as a result of Defendants' fraud, Plaintiff and the Class members are
6 entitled to civil penalties and/or punitive damages, and the amount of such damages;

7 s. Whether Defendants should be enjoined from engaging in the methods, acts, or
8 practices alleged herein and should be ordered to prevent future sales of mislabeled Pinot Noir;

9 t. Whether Defendants should be ordered to disgorge, for the benefit of the Class
10 members, all or part of their ill-gotten profits received from the sale of the wine labeled as Pinot Noir,
11 and/or make restitution to Plaintiff and the Class members.

12 **C. Typicality**

13 54. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff
14 and all members of the proposed class sustained injuries and damages arising out of and caused by
15 Defendants' unlawful, unfair, and fraudulent business acts and practices and deceptive advertising in the
16 marketing and sale of its Pinot Noir to consumers as alleged herein.

17 **D. Adequacy of Representation**

18 55. Plaintiff will fairly and adequately represent and protect the interests of the members of the
19 proposed class. Counsel who represents Plaintiff are competent and experienced in litigating large class
20 actions.

21 **E. Superiority of Class Action**

22 56. A class action is superior to other available means for the fair and efficient adjudication of
23 this controversy. Individual joinder of all proposed class members is not practicable, and questions of
24 law and fact common to the proposed class predominate over any questions affecting only individual
25 members of the proposed class. Each member of the proposed class has been damaged and is entitled
26 to recovery by reason of Defendants' unlawful, unfair, and fraudulent business acts and practices and
27 deceptive advertising in the marketing and sale of its Pinot Noir.

28

FIRST CAUSE OF ACTION:

PURSUANT TO BUSINESS & PROFESSIONS CODE §17200

59. This is a Representative Private Attorney General Action and Class Action for Unfair Business Practices. Plaintiff on behalf of himself, the general public, and others similarly situated, brings this claim pursuant to Business and Professions Code §17200 *et seq.* The conduct of all Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure §1021.5.

19 61. Defendants, by labeling, marketing, promoting, distributing, and selling the falsely labeled
20 Pinot Noir wine, either knew or in the exercise of reasonable care, should have known that their conduct
21 was misleading and deceptive and therefore in violation of §17200 *et seq.* of the Business and
22 Professions Code.

27 63. Pursuant to the Business and Professions Code, this Court should make such orders or

1 judgments, including the appointment of a receiver, as may be necessary to disgorge Defendants of
 2 ill-gotten profits which may be necessary to restore to Plaintiff and the Proposed Class the money
 3 Defendants have unlawfully received.

4 **VIII**

5 **SECOND CAUSE OF ACTION**

6 **UNTRUE OR MISLEADING ADVERTISING**

7 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17500**

8 64. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
 9 as if fully set forth herein.

10 65. At all times herein mentioned, Defendants labeled, marketed, promoted, distributed, and
 11 sold falsely labeled Pinot Noir wine to customers nationwide.

12 66. Since at least four years prior to the filing of the Complaint and continuing to the present,
 13 Defendants have engaged in advertising campaigns to sell the falsely labeled Pinot Noir wine to the
 14 public, including Plaintiff and others.

15 67. Via its website, its labels and any and all references to bottles of Pinot Noir sold by it,
 16 Defendants represent that its Pinot Noir wine is actually composed primarily of Pinot Noir grapes. Such
 17 advertisements are and were disseminated to and received by the public.

18 68. Defendants' advertising was untrue or misleading and likely to deceive the public in that
 19 Defendants represented to Plaintiff and the Proposed Class that the wine they sold was of a superior
 20 quality than was actually the case. Defendants represented that they were selling premium Pinot Noir
 21 wine, when in fact they were selling inexpensive red table wine composed primarily of cheaper Merlot
 22 and Syrah grapes.

23 69. In making and disseminating the statements herein alleged, Defendants knew, or by the
 24 exercise of reasonable care should have known, that the statements were untrue or misleading and so
 25 acted in violation of §17500 of the Business and Professions Code.

26 70. Pursuant to Business and Professions Code §17535, this Court should make such orders or
 27 judgments, including the appointment of a receiver, as may be necessary to restore Plaintiff and members
 28

1 of the Proposed Class, money paid to or acquired by Defendants in connection with the sales of the
2 falsely labeled Pinot Noir.

3 **IX**

4 **THIRD CAUSE OF ACTION**

5 **FRAUD AND INTENTIONAL DECEIT**

6 **PURSUANT TO CIVIL CODE §1709**

7 71. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
8 as if fully set forth herein.

9 72. Civil Code §1709 provides in relevant part: tortious fraud or deceit occurs when a party
10 "willfully deceives another with the intent to induce him to alter his position to his injury or risk.

11 73. The unlawful, unfair, and fraudulent business acts and practices of Defendants constitute
12 fraud under Civil Code §1709 in that Defendants materially misrepresented the falsely labeled wine as
13 Pinot Noir when they knew that the wine they labeled, marketed, promoted, distributed, and sold was
14 not actually Pinot Noir wine. This substantially increased their profits.

15 74. Defendants knowingly concealed and failed to disclose material facts with the intent to
16 induce reliance upon this material misrepresentation. Specifically, Defendants misrepresented to
17 Plaintiff and the Proposed Class that the wine they sold was of a higher quality than was actually the case
18 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

19 75. Plaintiff and similarly situated class members justifiably relied upon this material
20 misrepresentation that the wine labeled, marketed, promoted, distributed, and sold by Defendants was
21 Pinot Noir wine when, in fact, it was not. This fraud was only revealed by happenstance and the hard
22 work of the French authorities.

23 76. As a result of Defendants' fraudulent acts, Plaintiff, and all others similarly situated, were
24 harmed. Defendants caused damage to Plaintiff and the proposed Class as they were induced to buy a
25 falsely labeled wine from Defendants when the actual wine purchased was of inferior quality. Because
26 of Defendants' fraudulent conduct, Plaintiff seeks punitive damages in an amount as may be proven.

27 **¶¶**

X

FOURTH CAUSE OF ACTION

FRAUDULENT CONCEALMENT AND NON-DISCLOSURE

77. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

78. Defendants knew (or should have known) that the wine mislabeled as Pinot Noir was mislabeled.

79. Defendants fraudulently concealed from and/or intentionally failed to disclose to Plaintiff, the Class members, and all others in the chain of distribution (e.g., concealments and omissions in Defendants' communications with wholesalers, retailers, and others in the chain of distribution that were ultimately passed on to Plaintiff and the Class members) the true nature of the wine mislabeled as Pinot Noir.

80. Defendants were and are under a duty to Plaintiff and the Class members to disclose these facts because:

a. Defendants are in a superior position to know the facts about the content of the wine mislabeled as Pinot Noir wine, which is not apparent to a consumer;

b. Defendants made disclosures about the content and nature of the wine mislabeled as Pinot Noir while not revealing its true content and nature; and

c. Defendants fraudulently and actively concealed the true nature of the wine mislabeled as Pinot Noir from Plaintiff and the Class members.

81. The facts concealed and/or not disclosed by Defendants to Plaintiff and the Class members are material facts in that a reasonable person would have considered them important in deciding whether or not to purchase (or to pay the same price for) a bottle of wine mislabeled as Pinot Noir.

82. Defendants intentionally concealed and/or failed to disclose the true content of the wine mislabeled as Pinot Noir for the purpose of inducing Plaintiff and the Class members to act thereon.

83. Plaintiff and the Class members justifiably acted or relied upon the concealed and/or non-disclosed facts as evidenced by their purchase of the wine mislabeled as Pinot Noir to their

1 detriment.

2 84. Had Plaintiff and the Class members known of the Defects they would not have purchased
3 (or would have paid less for) the wine mislabeled as Pinot Noir.

4 85. As a direct and proximate cause of Defendants' misconduct, Plaintiff and Class members
5 have suffered actual damages in that they bought wine mislabeled as Pinot Noir that was not what it
6 purported to be.

7 86. Defendants' conduct has been and is wanton and/or reckless and/or shows a reckless
8 indifference to the interests of others.

9 87. Defendants acted with "malice" as that term is defined in Civ. Code § 3294(c)(1) by
10 engaging in conduct that was and is intended by Defendants to cause damage to the Plaintiff and the
11 Class members.

12 88. Defendants committed "fraud" as that term is defined in Civ. Code § 3294(c)(3) through
13 its concealment of material facts known to Defendants with the intent to cause injury to the Plaintiff and
14 the Class members.

15 89. Plaintiff, on behalf of himself and all others similarly situated, demands judgment against
16 Defendants for actual and punitive damages in accordance with Civ. Code § 3294(a) for himself and
17 each Class member, plus attorneys' fees for the establishment of a common fund, interest, and costs.

18 **XI**

19 **FIFTH CAUSE OF ACTION**

20 **NEGLIGENT MISREPRESENTATION**

21 **PURSUANT TO CIVIL CODE §§1572(2), 1709, 1710**

22 90. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
23 as if fully set forth herein.

24 91. Negligent misrepresentation occurs if a party to the contract makes a positive assertion, in
25 a manner not warranted by the information of the person making it, of that which is not true, though he
26 believes it to be true, with an intent to deceive another party thereto, or to induce him to enter into the
27 contract. Civ. Code §1572. Negligent misrepresentation may also occur if a person willfully deceives
28

1 another person with intent to induce him to alter his position to his injury or risk, is liable for any
2 damage which he thereby suffers. Civ. Code §§1709, 1710.

3 92. Defendants negligently misrepresented and concealed from Plaintiff, and all others similarly
4 situated, the true nature of their falsely labeled Pinot Noir wine.

5 93. These material misrepresentations were negligently made to Plaintiff, and all others
6 similarly situated, through uniform mislabeling, non-disclosure, concealment, and through mass media,
7 point-of-sale advertising, and other information disseminated by Defendants.

8 94. Defendants knew at all times that Plaintiff and the proposed Class relied upon its labeling.
9 Defendants materially misrepresented the falsely labeled wine as Pinot Noir when they knew, or by the
10 exercise of reasonable care should have known, that the wine they labeled, marketed, promoted,
11 distributed, and sold was not actually Pinot Noir wine.

12 95. Defendants materially misrepresented the falsely labeled wine as Pinot Noir without any
13 reasonable ground for believing that the wine was actually Pinot Noir.

14 96. Defendants intended to induce reliance upon this material misrepresentation to influence
15 the purchasing decisions of Plaintiff, and all others similarly situated. Defendants misrepresented to
16 Plaintiff and the Proposed Class that the wine it sold was of a higher quality than was actually the case
17 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

18 97. Plaintiffs justifiably relied upon Defendants' labeling believing that they were purchasing
19 Pinot Noir wine as labeled.

20 98. As a result of Defendants' negligent misrepresentations, Plaintiff, and all others similarly
21 situated, were harmed. Defendants caused damage to Plaintiff and the proposed Class as they were
22 induced to buy a falsely labeled wine from Defendants when the actual wine purchased was of inferior
23 quality.

24 99. Defendant's conduct as described above and the policy were done with a conscious
25 disregard of the rights of plaintiff and others similarly situated in clear violation of California Law and
26 resulted in oppression, and/or malice constituting despicable conduct under California Civil Code §3294
27 entitling plaintiff to punitive damages in an amount appropriate to punish or set an example of
28

1 defendants.

2 **XII**

3 **SIXTH CAUSE OF ACTION**

4 **BREACH OF EXPRESS WARRANTY**

5 100. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
6 as if fully set forth herein.

7 101. As set forth above, each bottle of wine mislabeled as Pinot Noir came with an express
8 warranty that listed its ingredients, including the percentage of Pinot Noir in each bottle.

9 102. Defendants breached their express warranties as set forth above, by supplying the wine
10 mislabeled as Pinot Noir to its customers in a condition such that the wine did not have the Pinot Noir
11 content that it purported to have.

12 103. Defendants received timely notice of the breach of warranty alleged herein pursuant to
13 Comm. Code § 2607(3)(A). Plaintiff, by and through Class Counsel, provided Defendants with notice
14 of the defects inherent in the wine mislabeled as Pinot Noir on July 21, 2010.

15 104. The wine mislabeled as Pinot Noir contains common hidden defects that were present at
16 the time of purchase, which could not be discovered by Plaintiff and the Class members.

17 105. Had Plaintiff and the Class members known that the wine mislabeled as Pinot Noir failed
18 to conform to the characteristics and qualities that Defendants expressly warranted, they would not have
19 purchased the wine mislabeled as Pinot Noir or would have paid less.

20 106. As a direct and proximate result of Defendants' breach of express warranty, Plaintiff and
21 the Class members have sustained damages in an amount to be determined according to proof at trial.

22 107. Plaintiff, on behalf of himself and all Class members, demands injunctive relief in the form
23 of a Court order mandating that Defendants take steps to stop the sale of all wine mislabeled as Pinot
24 Noir wine or, alternatively, replace the label on all bottles of wine mislabeled as Pinot Noir wine with
25 a label that accurately describes the wine inside the bottle and/or damages in an amount to be proven at
26 trial, plus attorneys' fees, costs, and interest pursuant to California Commercial Code Sections 2714 and
27 2715.

28

XIV

**SEVENTH CAUSE OF ACTION
BREACH OF THE IMPLIED COVENANT
OF GOOD FAITH AND FAIR DEALING**

108. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

109. In every contract or agreement there is an implied promise of good faith and fair dealing meaning that each party will not do anything to unfairly interfere with the right of any other party to receive the benefits of the contract.

110. Defendants unfairly interfered with Plaintiff's right, and the rights of all others similarly situated, to receive the benefits of the contract in that it knew Plaintiff and the proposed Class relied upon its labeling, yet it unfairly, unlawfully, and fraudulently mislabeled its wine to influence the purchasing decisions of Plaintiff and the proposed Class.

111. As a result of Defendants' unfair, unlawful, and fraudulent acts, Plaintiff, and all others similarly situated, were harmed. Defendants caused damage to Plaintiffs as they were induced to buy a falsely labeled wine from Defendants when the actual wine purchased was of inferior quality.

XV

**EIGHTH CAUSE OF ACTION
MONEY HAD AND RECEIVED**

112. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

113. As a result of the conduct described above, Defendants have been and may continue to be unjustly enriched at the expense of the Plaintiff and the proposed Class. Specifically, Defendants' unlawful, unfair, and fraudulent conduct have enabled Defendants to label, market, promote, distribute, and sell a less expensive and falsely labeled Pinot Noir wine to Plaintiff and the proposed Class unjustly enriching Defendants.

114. Defendant received the money of Plaintiff and the proposed for its falsely labeled Pinot Noir

1 wine. The money was intended for the purchase of Pinot Noir wine. Because the wine was not Pinot
 2 Noir wine, but instead a less expensive vintage, Plaintiff and the proposed Class, did not receive the
 3 benefit of the purchase money. Defendants have not returned the money to Plaintiff and the proposed
 4 Class.

5 115. It would be unjust and inequitable to allow Defendants to retain their ill gotten profits and
 6 therefore should be required to disgorge profits unlawfully obtained.

7 RELIEF REQUESTED

8 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for judgment
 9 as follows:

10 1. An order certifying the proposed Class and any appropriate subclasses and designating
 11 Plaintiff as Class Representative and his counsel as Class Counsel;

12 2. Monetary damages, including but not limited to any compensatory, incidental or
 13 consequential damages commensurate with proof at trial for the acts complained of herein;

14 3. Punitive damages and civil penalties in accordance with proof and in an amount consistent
 15 with applicable precedent;

16 4. A declaration that Defendants are financially responsible for notifying all Class members
 17 of the misrepresentation;

18 5. An order requiring Defendants to immediately cease its wrongful conduct as set forth above;

19 6. A permanent injunction mandating that Defendants act to stop the sale of the mislabeled
 20 Pinot Noir;

21 7. A declaration that Defendants must disgorge, for the benefit of the Class, all or part of its
 22 ill-gotten profits received from the sale of the wine mislabeled as Pinot Noir, and/or to make restitution
 23 to Plaintiff and the Class members;

24 8. For attorneys' fees pursuant to California Code of Civil Procedure §1021.5 or other legal
 25 basis as may be proven;

26 9. For costs of suit;

27 10. Statutory pre-judgment interest; and
 28

11. For such other relief as the court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

DATED: August 9, 2010

KINGSLEY & KINGSLEY, APC

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EXHIBIT B

(ORIGINAL)

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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

SEP 17 2010

John A. Clarke, Executive Officer/Clerk
 BY Raul Sanchez Deputy

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Attorneys for Plaintiffs

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
 FOR THE COUNTY OF LOS ANGELES - CENTRAL**

MARK ZELLER, on behalf of himself
 and others similarly situated,

Plaintiffs,

v.

CONSTELLATION BRANDS, INC.;
 CONSTELLATION WINES U.S., INC.;
 SICA CAVES DU SIEUR D'ARQUES;
 AIMERY SIEUR D'ARQUES;
 VIGNERON DU SIEUR D'ARQUES;
 DOMAINE ET VIGNOBLE DU SUD;
 formerly known as Société Ducasse; and
 DOES 1 to 50 Inclusive,

Defendants.

CASE NO.: BC443338

**NOTICE OF NON-COMPLEX
 DESIGNATION AND REASSIGNMENT**

JUDGE: SOUSSAN G. BRUGUERA
 DEPT.: 71

PLEASE TAKE NOTICE, that this case is designated non-complex and is reassigned to Judge

Soussan G. Bruguera in Department 71 at Stanley Mosk Courthouse for all further proceedings.

1 Plaintiff was ordered to give notice. Attached as Exhibit 1 is a copy of the court's notice.
2

3 DATED: September 17, 2010

KINGSLEY & KINGSLEY, APC

4
5 By: 

KELSEY PETERSON-MORE
Attorney for Plaintiffs
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/03/10

DEPT. 324

HONORABLE EMILIE H. ELIAS

JUDGE

A. MORALES

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am BC443338

Plaintiff

Counsel

MARK ZELLER

NO APPEARANCES

VS

Defendant

CONSTELLATION BRANDS INC ET AL

Counsel

NON-COMPLEX (09-03-10)

NATURE OF PROCEEDINGS:

COURT ORDER

This Court makes its determination whether or not this case should be deemed complex pursuant to Rule 3.400 of the California Rules of Court.

This case is designated non-complex and is reassigned to Judge Soussan G. Bruguera in Department 71 at Stanley Mosk Courthouse for all further proceedings.

Plaintiff is ordered to serve a copy of this minute order on all parties forthwith and file a proof of service in Department 71 within five (5) days of service.

Any party objecting to the non-complex designation must file an objection and proof of service in Department 324 within ten (10) days of service of this minute order. Any response to the objection must be filed in Department 324 within seven (7) days of service of the objection. This Court will make its ruling on the submitted pleadings.

CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER

Page 1 of 2 DEPT. 324

MINUTES ENTERED
09/03/10
COUNTY CLERK

EXHIBIT 1

Exhibit B Page 33

09/03/10

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 09/03/10

DEPT. 324

HONORABLE EMILIE H. ELIAS

JUDGE

A. MORALES

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

8:30 am BC443338

Plaintiff

Counsel

MARK ZELLER

NO APPEARANCES

VS

Defendant

CONSTELLATION BRANDS INC ET AL

Counsel

NON-COMPLEX (09-03-10)

NATURE OF PROCEEDINGS:

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 09-03-10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 09-03-10

John A. Clarke, Executive Officer/Clerk

By:

KIN HILAIRE

K. HILAIRE

KINGSLEY & KINGSLEY, APC
Eric B. Kingsley, Esq.
16133 Ventura Boulevard, Suite 1200
Encino, California 91436

89/03/10

PROOF OF SERVICE
[CCP 1013(a)(3)]

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action. My business address is 16133 Ventura Boulevard, Suite 1200, Encino, California 91436.

On September 17, 2010, I served all interested parties in this action the following documents described as **NOTICE OF NON-COMPLEX DESIGNATION AND REASSIGNMENT** by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Peter M. Brody
 on behalf of SDA Entities
 ROPES & GRAY LLP
 One Metro Center 700 12th Street
 NW, Suite 900
 Washington, DC 20005-3948

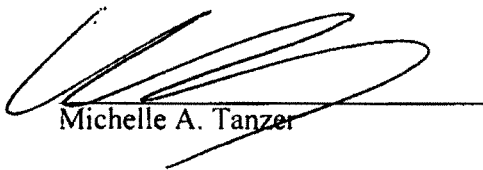
Rocky C. Tsai
 Thad A. Davis
 on behalf of SDA Entities
 ROPES & GRAY LLP
 Three Embarcadero Center
 San Francisco, CA 94111- 4006

[XX] (BY MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage fully prepaid at Encino, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

|| (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to Attorney Related Services, our process server who will cause it to be delivered by personal service to the offices of the addressee.

[XX] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on September 17, 2010, at Encino, California.


 Michelle A. Tanzer

COPY

ORIGINAL FILED
OCT 22 2010
LOS ANGELES
SUPERIOR COURT

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sandre@nixonpeabody.com

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11 Attorneys for Defendants

12 CONSTELLATION BRANDS, INC. and

13 CONSTELLATION WINES U.S., INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA

15 COUNTY OF LOS ANGELES

16
17 MARK ZELLER, on behalf of himself and others
18 similarly situated,

19 Plaintiff,

20 v.

21 CONSTELLATION BRANDS, INC.;
22 CONSTELLATION WINES U.S., INC.; SICA
23 CAVES DU SIEUR D'ARQUES; AIMERY
24 SIEUR D'ARQUES; VIGNERON DU SIEUR
25 D'ARQUES; DOMAINE ET VIGNOBLE DU
26 SUD, formerly known as Soci  r   Ducasse; and
27 DOES 1 to 50 Inclusive,

28 Defendants.

Case No. BC443338

**DECLARATION OF SARAH E. ANDR   IN
SUPPORT OF OBJECTION OF
CONSTELLATION BRANDS, INC. AND
CONSTELLATION WINES U.S., INC. TO
COURT'S DESIGNATION OF CASE AS
NON-COMPLEX**

Dept. 324

Hon. Emilie H. Elias

Complaint Filed: August 10, 2010

Trial Date: None Set

DECLARATION OF SARAH E. ANDR   IN SUPPORT OF
OBJECTION OF CONSTELLATION BRANDS, INC. AND
CONSTELLATION WINES U.S., INC. TO COURT'S
DESIGNATION OF CASE AS NON-COMPLEX; CASE NO.
BC443338

13202520.1

DECLARATION OF SARAH E. ANDRÉ

I, Sarah E. André, declare as follows:

1. I am an attorney-at-law, duly licensed to practice in the state of California, and an associate of the firm of Nixon Peabody LLP, counsel for Defendants Constellation Brands, Inc., and Constellation Wines U.S., Inc. (the "Constellation Defendants"). As such, I am personally familiar with this action and have personal knowledge of the facts set forth herein and could competently testify thereto.

2. Attached as Exhibit A is a copy of the Complaint filed April 13, 2010, in the case *Zeller v. E.&J. Gallo Winery*, Case No. BC 432711.

3. Attached as Exhibit B is a copy of the Docket for *Zeller v. E.&J. Gallo Winery*, Case No. BC 432711, referencing the action as complex.

These documents were obtained from the Los Angeles Superior Court's website. To the best of my knowledge, the attached documents are true and accurate copies.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on October 22, 2010 at Los Angeles, California.

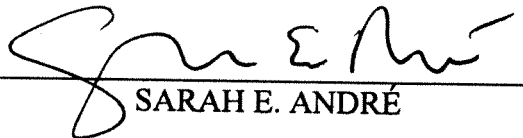

SARAH E. ANDRÉ

EXHIBIT A

(ORIGINAL)**FILED**
Los Angeles Superior Court

FEB 25 2010

John A. Clarke, Executive Officer/Clerk
By SHAUNYA WESLEY Deputy

KINGSLEY & KINGSLEY, APC
ERIC B. KINGSLEY, ESQ., SBN-185123
BRIAN LEVINE, ESQ., SBN-251416
KELSEY PETERSON-MORE, ESQ., SBN-260264
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ENCINO, CA 91436
(818) 990-8300, FAX (818) 990-2903

Attorneys for Plaintiff

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

MARK ZELLER, on behalf of
of himself and others similarly situated,

Plaintiffs,

v.

E & J GALLO WINERY, INC.;
AIMERY SIEUR D'ARQUES;
DUCASSE COMPANY; and
DOES 1 to 50 Inclusive,

Defendants.

Case No.:

BC432711

CLASS ACTION COMPLAINT FOR:

- (1) VIOLATION OF THE UNFAIR COMPETITION LAW (Business and Professions Code §17200 *et seq.*)
- (2) VIOLATION OF THE FALSE ADVERTISING LAW (Business and Professions Code §17500 *et seq.*)
- (3) FRAUD
- (4) NEGLIGENT MISREPRESENTATION
- (5) BREACH OF THE IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING
- (6) MONEY HAD AND RECEIVED

JURY TRIAL DEMANDED

Plaintiff, Mark Zeller ("Plaintiff"), complaining of the above-named Defendants, alleges as follows, which allegations are upon information and belief insofar as they pertain to the Defendants:

**I
INTRODUCTION**

1. This is a civil action brought under the Unfair Competition Law (Business and Professions Code §17200 *et seq.*) and the False Advertising Law (Business and Professions Code §17500 *et seq.*) to redress Defendants' unlawful, unfair and fraudulent business acts and practices and deceptive

CLASS ACTION COMPLAINT

1 advertising in the marketing and sale of its falsely labeled Pinot Noir wine to consumers. Millions of
 2 bottles of red wine labeled, marketed, distributed, and sold by Defendants as Pinot Noir, were, in fact,
 3 not Pinot Noir wine.

4 2. Upon information and belief, Defendants labeled, marketed, distributed, and sold millions
 5 of bottles of Pinot Noir under the label Red Bicyclette, among others. These bottles of falsely labeled
 6 Pinot Noir wine were illegally cut with cheaper Syrah and Merlot grapes.

7 II

8 JURISDICTION AND VENUE

9 3. Each of the Defendants has headquarters in, or does substantial business in, the State of
 10 California.

11 4. Each of the business acts and practices described herein was performed, in whole or in part,
 12 in the State of California.

13 5. Venue as to each defendant is proper in this judicial district, pursuant to Code of Civil
 14 Procedure §395. Defendants is headquartered in California, operates in California, and sells its Pinot
 15 Noir wines nationwide, including within the State of California and the County of Los Angeles. The
 16 unlawful, unfair, and fraudulent business acts and practices and false advertising alleged herein have
 17 a direct effect on Plaintiff and those similarly situated within the State of California and Los Angeles
 18 County.

19 III

20 PARTIES

21 A. Plaintiff

22 6. Plaintiff MARK ZELLER is a resident of California.

23 7. Plaintiff ZELLER has purchased Defendants' Pinot Noir wine.

24 8. Defendants failed to provide Plaintiff and all others similarly situated with the Pinot Noir
 25 wine that it advertised and sold as Pinot Noir wine. Instead, Defendants illegally provided Plaintiff and
 26 others similarly situated with an inferior wine made from less expensive grapes.

27 B. Defendants

28 9. Defendant E & J GALLO WINERY is a California corporation operating in California.

1 Defendant owns and operates several locations in the State of California. Defendant's corporate address
 2 is 600 Yosemite Blvd., Modesto, CA 95353. Defendant has sold bottles of falsely labeled wine to
 3 Plaintiff and similarly situated persons throughout the State of California.

4 10. Defendant AIMERY SIEUR D'ARQUES is a French cooperative that grew the grapes
 5 that were used to make the fake Pinot Noir wine sold by Defendant E & J Gallo Winery, Inc.
 6 Defendant's principle place of business is located at Avenue du Carcassonne BP 30, 11300 Limoux,
 7 France.

8 11. Defendant DUCASSE COMPANY is a French entity that sold the wine to Defendant E
 9 & J Gallo Winery, Inc. Defendant's principle place of business is located at 23 Quai Bellevue 11000,
 10 Caracassonne, France.

11 12. The true names and capacities, whether individual, corporate, associate, or otherwise, of
 12 Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore
 13 sues defendants by such fictitious names under Code of Civil Procedure §474. Plaintiff is informed and
 14 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally
 15 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court
 16 to amend this Complaint to reflect the true names and capacities of the defendants designated
 17 hereinafter as DOES when such identities become known.

18 13. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in
 19 all respects pertinent to this action as *the agent of the other Defendants*, carried out a joint scheme,
 20 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
 21 attributable to the other Defendants.

22 IV

23 OVERVIEW OF APPLICABLE LAW

24 A. The Unfair Competition Law

25 14. The Unfair Competition Law ("UCL") prohibits "unfair competition," which is defined by
 26 Business and Professions Code §17200 as including "any unlawful, unfair or fraudulent business act
 27 or practice . . ."

28 15. As the California Supreme Court has noted, the UCL's "purpose is to protect both

1 consumers and competitors by promoting fair competition in commercial markets for goods and
 2 services." (*Kasky v. Nike Inc.* (2002) 27 Cal.4th 939, 949.) The UCL is broadly worded, leading the
 3 California Supreme Court to observe that the UCL "was intentionally framed in its broad, sweeping
 4 language, precisely to enable judicial tribunals to deal with the innumerable new schemes which the
 5 fertility of man's invention would contrive." (*Barquis v. Merchants Collection Association* (1972) 7
 6 Cal.3d 94, 112 [citations and internal quotation marks omitted].) The UCL contains no express intent,
 7 knowledge, or negligence requirement, and therefore has been construed as "impos[ing] strict liability."
 8 (*Searle v. Wyndham International, Inc.* (2002) 102 Cal.App.4th 1327, 1333.)

9 16. "Because Business and Professions Code §17200 is written in the disjunctive, it establishes
 10 three varieties of unfair competition – acts or practices which are unlawful, or unfair, or fraudulent."
 11 (*Podolsky v. First Healthcare Corp.* (1996) 50 Cal.App.4th 632, 647.)

12 17. The unlawful prong of §17200 proscribes "anything that can properly be called a business
 13 practice and that at the same time is forbidden by law." (*People v. McKale* (1979) 25 Cal.3d 626, 632;
 14 see also *Podolosky v. First Healthcare Corp.*, *supra*, 50 Cal.App.4th at p. 647 ["Virtually any state,
 15 federal or local law can serve as the predicate for an action under Business and Professions Code section
 16 17200."]; *Saunders v. Superior Court* (1994) 27 Cal.App.4th 832, 838-839 ["The 'unlawful' practices
 17 prohibited by §17200 are any practices forbidden by law, be it civil or criminal, federal, state, or
 18 municipal, statutory, regulatory, or court-made."].)

19 18. The *unfair* prong of §17200 "provides an independent basis for relief"; in other words, "[i]t
 20 is not necessary for a business practice to be 'unlawful' in order to be subject to an action under the
 21 unfair competition law." (*Smith v. State Farm Mutual Automobile Insurance Co.* (2001) 93 Cal.App.4th
 22 700, 718.) "In general the 'unfairness' prong 'has been used to enjoin deceptive or sharp practices. . .'
 23 [Citation.]" (*South Bay Chevrolet v. General Motors Acceptance Corp.* (1999) 72 Cal.App.4th 861,
 24 887.)

25 19. The courts of this State have adopted several tests for determining whether a business act
 26 or practice is *unfair*:

27 20. A business practice is unfair "when that practice 'offends an established public policy or
 28 when the practice is immoral, unethical, oppressive, unscrupulous or substantially injurious.'" (*State*

1 *Farm Fire & Casualty Co. v. Superior Court* (1996) 45 Cal.App.4th 1093, 1102 [quoting *People v.*
 2 *Casa Blanca Convalescent Homes, Inc.* (1984) 159 Cal.App.3d 509, 530].)

3 21. Another "test of whether a business practice is unfair involves an examination of [that
 4 practice's] impact on its alleged victim, balanced against the reasons, justifications and motives of the
 5 alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the
 6 gravity of the harm to the alleged victim. . ." (*State Farm Fire & Casualty Co. v. Superior Court, supra*,
 7 45 Cal.App.4th at pp. 1103-1104.)

8 22. It also is an unfair business practice when the defendant's conduct "threatens an incipient
 9 violation of [a law], or violates the policy or spirit of [a law] because its effects are comparable to or
 10 the same as a violation of the law, or otherwise significantly threatens or harms competition."
 11 (*Cel-Tech Communication, Inc. v. Los Angeles Cellular Telephone Co.* (1999) 20 Cal.4th 163, 187; see
 12 also *Scripps Clinic v. Superior Court (Thompson)* (2003) 108 Cal.App.4th 917, 940.)

13 23. More recently, one Court of Appeal has fashioned a test for determining whether a practice
 14 is unfair based upon section 5 of the Federal Trade Commission Act (United States Code, title 15,
 15 section 41 *et seq.*). Under this test, "[a]n act or practice is unfair if [1] the consumer injury is
 16 substantial, [2] is not outweighed by any countervailing benefits to consumers or to competition, and
 17 [3] is not an injury the consumers themselves could reasonably have avoided." (*Daugherty v. American*
 18 *Honda Motor Co., Inc.* (2006) 144 Cal.App.4th 824, 839 [bracketed numbers added].)

19 24. The fraudulent prong of §17200 "affords protection against the probability or likelihood
 20 as well as the actuality of deception or confusion." (*Payne v. United California Bank* (1972) 23
 21 Cal.App.3d 850, 856.) "The test is whether the public is likely to be deceived." (*South Bay Chevrolet*
 22 *v. General Motors Acceptance Corp., supra*, 72 Cal.App.4th at p. 888.)

23 **B. The False Advertising Law**

24 25. Business and Professions Code §17500, a provision of the False Advertising Law ("FAL"),
 25 provides in relevant part that it is: (a) "unlawful for any person, firm, corporation or association," (b)
 26 "to make or disseminate or cause to be made or disseminated before the public in this state," (c) "in any
 27 newspaper or other publication, or any advertising device, . . . or in any other manner or means," (d) "any
 28 statement, concerning. . . [the performance of] services. . . which is untrue or misleading," (e) "which is

1 known, or which by the exercise of reasonable care should be known, to be untrue or misleading," and
 2 (f) "with intent directly or indirectly to . . . perform services, professional or otherwise. . . or to induce the
 3 public to enter into any obligation relating thereto. . ."

4 26. The False Advertising Law applies broadly to commercial speech and includes within its
 5 purview not merely advertisements specific to products or services being sold, but also to more general
 6 statements intended to burnish a corporation's image in the eyes of the public. (See *Kasky v. Nike, Inc.*,
 7 *supra*, 27 Cal.4th 939.)

8 27. A statement is "untrue or misleading" for purposes of §17500 "if members of the public
 9 are likely to be deceived." (*Chern v. Bank of America* (1976) 15 Cal.3d 866, 876.)

10 28. While §17200 can be violated with no showing that the defendant acted intentionally,
 11 knowingly, or negligently, §17500 requires proof that the statement was "known, or which by the
 12 exercise of reasonable care should be known, to be untrue or misleading" (Business and Professions
 13 Code §17500), which creates a negligence standard. (See *Khan v. Medical Board* (1993) 12
 14 Cal.App.4th 1834, 1846.) Under this standard, a seller has "a duty of investigation," such that the
 15 seller's "failure to verify and investigate breaches the duty of care when facts are present which would
 16 put a reasonable person on notice of possible misrepresentations." (*People v. Superior Court (Forest*
 17 *E. Olson, Inc.*) (1982) 137 Cal.App.3d 137, 139.)

18 29. A violation of §17500 may be the subject of a civil action seeking an injunction and/or
 19 restitution. (Business and Professions Code §§17535 and 17536.)

20 V

21 CLASS ACTION ALLEGATIONS

22 30. Plaintiff is seeking to represent a class of similarly situated Californians defined as follows:

23 All persons who purchased wine labeled as Pinot Noir that was sold and/or
 24 distributed by E & J GALLO WINERY including, but not limited to, Red
 25 Bicycleette label, within the State of California that can be traced to the
 26 18,000,000 bottles of wine subject to the French criminal proceeding in
 Carcassonne, France that culminated in 12 convictions in February 2010.
 ("Proposed Class")

27 31. This action is brought as a class action and may properly be so maintained pursuant to the
 28 provisions of the Code of Civil Procedure §382. Plaintiff reserves the right to modify the class

1 definition and the class period based on the results of discovery pursuant to Rule 3.765 of the California
2 Rules of Court.

3 **A. Numerosity**

4 32. The potential members of the proposed class as defined are so numerous that joinder of
5 all the members of the proposed class is impracticable. While the precise number of proposed class
6 members has not been determined at this time, Plaintiff is informed and believes that at least 300,000
7 bottles of Pinot Noir wine were sold in the State of California.

8 33. Plaintiff alleges Defendants' records would provide information as to the total number of
9 bottles of wine sold. Joinder of all members of the proposed class is not practicable.

10 **B. Commonality**

11 34. There are questions of law and fact common to the proposed class that predominate over
12 any questions affecting only individual class members. These common questions of law and fact
13 include, without limitation:

14 (a) Whether the Pinot Noir wine labeled, marketed, promoted, distributed, and sold
15 by Defendants violates the Unfair Competition Law;

16 (b) Whether Defendants violated the False Advertising Law by promoting the wines
17 it labeled, marketed, promoted, distributed, and sold as Pinot Noir;

18 (c) Whether Defendant knew or should have known that the wine it labeled,
19 marketed, promoted, distributed, and sold as Pinot Noir was made from grapes other than those used
20 to make Pinot Noir wine;

21 (d) Whether Plaintiff and Similarly Situated Class Members justifiably relied on
22 Defendants' representation that the wine it sold was Pinot Noir;

23 **C. Typicality**

24 35. The claims of the named Plaintiff are typical of the claims of the proposed class. Plaintiff
25 and all members of the proposed class sustained injuries and damages arising out of and caused by
26 Defendants' unlawful, unfair and fraudulent business acts and practices and deceptive advertising in the
27 marketing and sale of its Pinot Noir to consumers as alleged herein.

28 **D. Adequacy of Representation**

1 36. Plaintiff will fairly and adequately represent and protect the interests of the members of
 2 the proposed class. Counsel who represents Plaintiff are competent and experienced in litigating large
 3 class actions.

4 **E. Superiority of Class Action**

5 37. A class action is superior to other available means for the fair and efficient adjudication
 6 of this controversy. Individual joinder of all proposed class members is not practicable, and questions
 7 of law and fact common to the proposed class predominate over any questions affecting only individual
 8 members of the proposed class. Each member of the proposed class has been damaged and is entitled
 9 to recovery by reason of Defendants' unlawful, unfair and fraudulent business acts and practices and
 10 deceptive advertising in the marketing and sale of its Pinot Noir.

11 38. Class action treatment will allow those similarly situated persons to litigate their claims
 12 in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is
 13 unaware of any difficulties that are likely to be encountered in the management of this action that would
 14 preclude its maintenance as a class action.

15 **VI**

16 **FIRST CAUSE OF ACTION**

17 **UNFAIR, MISLEADING AND DECEPTIVE BUSINESS PRACTICES**

18 **PURSUANT TO BUSINESS & PROFESSIONS CODE §17200**

19 39. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
 20 as if fully set forth herein.

21 40. This is a Representative Private Attorney General Action and Class Action for Unfair
 22 Business Practices. Plaintiff on behalf of himself, the general public, and others similarly situated, bring
 23 this claim pursuant to Business and Professions Code §17200 *et seq.* The conduct of all Defendants
 24 as alleged in this Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the
 25 general public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
 26 interest within the meaning of Code of Civil Procedure §1021.5.

27 41. Plaintiff is a "person" within the meaning of Business and Professions Code §17204, and
 28 therefore has standing to bring this cause of action for restitution and other appropriate equitable relief.

42. Defendants, by labeling, marketing, promoting, distributing, and selling the falsely labeled wine, either knew or in the exercise of reasonable care, should have known that their conduct was misleading and deceptive and therefore in violation of §17200 *et seq.* of the Business and Professions Code.

43. As a proximate result of the above mentioned acts of Defendants, Plaintiff and others similarly situated reasonably relied on the Defendants' representations that the wine it sold was Pinot Noir and purchased the wine at a value greater than it would have sold for if properly labeled. Plaintiff and Class Members have been damaged and are entitled to restitution in a sum as may be proven.

44. Pursuant to the Business and Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to disgorge Defendants of ill-gotten profits which may be necessary to restore to Plaintiff and the Proposed Class the money Defendants have unlawfully received.

VII

SECOND CAUSE OF ACTION

UNTRUE OR MISLEADING ADVERTISING

PURSUANT TO BUSINESS & PROFESSIONS CODE §17500

45. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

46. At all times herein mentioned, Defendants labeled, marketed, promoted, distributed, and sold falsely labeled Pinot Noir wine to customers throughout California, the United States, and the World.

47. Since at least four years prior to the filing of the Complaint and continuing to the present, Defendants have engaged in advertising campaigns to sell the falsely labeled Pinot Noir to the public, including Plaintiff and others.

48. The advertisements are and were disseminated to and received by the public. The advertisements included the labeling of its bottles of Pinot Noir wine as well as any and all references to bottles of Pinot Noir sold by Defendants throughout the United States and throughout the World.

49. Defendants' advertising was untrue or misleading and likely to deceive the public in that

1 Defendants represented to Plaintiff and the Proposed Class that the wine it sold was of a higher quality
2 than was actually the case.

3 50. In making and disseminating the statements herein alleged, Defendants knew, or by the
4 exercise of reasonable care should have known, that the statements were untrue or misleading and so
5 acted in violation of §17500 of the Business and Professions Code.

6 51. Pursuant to Business and Professions Code §17535, this Court should make such orders
7 or judgments, including the appointment of a receiver, as may be necessary to restore Plaintiff and
8 members of the Proposed Class, money paid to or acquired by Defendants in connection with the sales
9 of the falsely labeled Pinot Noir.

VIII

THIRD CAUSE OF ACTION

FRAUD AND INTENTIONAL DECEIT

PURSUANT TO CIVIL CODE §1709

14 52. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
15 as if fully set forth herein.

16 53. Civil Code §1709 provides in relevant part: tortious fraud or deceit occurs when a party
17 "willfully deceives another with the intent to induce him to alter his position to his injury or risk.

18 54. The unlawful, unfair, and fraudulent business acts and practices of Defendants constitute
19 fraud under Civil Code §1709 in that Defendants materially misrepresented the falsely labeled wine as
20 Pinot Noir when they knew that the wine they labeled, marketed, promoted, distributed, and sold was
21 not actually Pinot Noir wine. This substantially increased their profits.

22 55. Defendants knowingly concealed and failed to disclose material facts with the intent to
23 induce reliance upon this material misrepresentation. Specifically, Defendants misrepresented to
24 Plaintiff and the Proposed Class that the wine it sold was of a higher quality than was actually the case
25 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

26 56. Plaintiff and similarly situated class members justifiably relied upon this material
27 misrepresentation that the wine labeled, marketed, promoted, distributed, and sold by Defendants was
28 Pinot Wine when, in fact, it was not. This fraud was only revealed by happenstance and the hard work

1 of the French authorities.

2 57. As a result of Defendants' fraudulent acts, Plaintiff, and all others similarly situated, were
3 harmed. Defendants caused damage to Plaintiff and the proposed Class as they were induced to buy
4 a falsely labeled wine from Defendants when the actual wine purchased was of inferior quality.
5 Because of defendant's fraudulent conduct, plaintiff seeks punitive damages in an amount as may be
6 proven.

7 **IX**

8 **FOURTH CAUSE OF ACTION**

9 **NEGLIGENT MISREPRESENTATION**

10 **PURSUANT TO CIVIL CODE §§1572(2), 1709, 1710**

11 58. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
12 as if fully set forth herein.

13 59. Negligent misrepresentation occurs if a party to the contract makes a positive assertion,
14 in a manner not warranted by the information of the person making it, of that which is not true, though
15 he believes it to be true, with an intent to deceive another party thereto, or to induce him to enter into
16 the contract. Civ. Code §1572. Negligent misrepresentation may also occur if a person willfully
17 deceives another person with intent to induce him to alter his position to his injury or risk, is liable for
18 any damage which he thereby suffers. Civ. Code §§1709, 1710.

19 60. Defendants negligently misrepresented and concealed from Plaintiff, and all others
20 similarly situated, the true nature of their falsely labeled Pinot Noir wine.

21 61. These material misrepresentations were negligently made to Plaintiff, and all others
22 similarly situated, through uniform mislabeling, non-disclosure, concealment, and through mass media,
23 point-of-sale advertising, and other information disseminated by Defendants.

24 62. Defendants knew at all times that Plaintiff and the proposed Class relied upon its labeling.
25 Defendants materially misrepresented the falsely labeled wine as Pinot Noir when they knew, or by the
26 exercise of reasonable care should have known, that the wine they labeled, marketed, promoted,
27 distributed, and sold was not actually Pinot Noir wine.

28 63. Defendants materially misrepresented the falsely labeled wine as Pinot Noir without any

1 reasonable ground for believing that the wine was actually Pinot Noir.

2 64. Defendants intended to induce reliance upon this material misrepresentation to influence
3 the purchasing decisions of Plaintiff, and all others similarly situated. Defendants misrepresented to
4 Plaintiff and the Proposed Class that the wine it sold was of a higher quality than was actually the case
5 in an effort to induce Plaintiff, and all others similarly situated, to buy the cheaper, falsely labeled wine.

6 65. Plaintiffs justifiably relied upon Defendants' labeling believing that they were purchasing
7 Pinot Noir wine as labeled.

8 66. As a result of Defendants' negligent misrepresentations, Plaintiff, and all others similarly
9 situated, were harmed. Defendants caused damage to Plaintiff and the proposed Class as they were
10 induced to buy a falsely labeled wine from Defendants when the actual wine purchased was of inferior
11 quality.

12 67. Defendant's conduct as described above and the policy were done with a conscious
13 disregard of the rights of plaintiff and others similarly situated in clear violation of California Law and
14 resulted in oppression, and/or malice constituting despicable conduct under California Civil Code §3294
15 entitling plaintiff to punitive damages in an amount appropriate to punish or set an example of
16 defendants.

17 X

18 **FIFTH CAUSE OF ACTION**
19 **BREACH OF THE IMPLIED COVENANT**
20 **OF GOOD FAITH AND FAIR DEALING**

21 68. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
22 as if fully set forth herein.

23 69. In every contract or agreement there is an implied promise of good faith and fair dealing
24 meaning that each party will not do anything to unfairly interfere with the right of any other party to
25 receive the benefits of the contract.

26 70. Defendants unfairly interfered with Plaintiff's right, and the rights of all others similarly
27 situated, to receive the benefits of the contract in that it knew Plaintiff and the proposed Class relied
28 upon its labeling, yet it unfairly, unlawfully, and fraudulently mislabeled its wine to influence the

1 purchasing decisions of Plaintiff and the proposed Class.

2 71. As a result of Defendants' unfair, unlawful, and fraudulent acts, Plaintiff, and all others
3 similarly situated, were harmed. Defendants caused damage to Plaintiffs as they were induced to buy
4 a falsely labeled wine from Defendants when the actual wine purchased was of inferior quality.

5 XI

6 SIXTH CAUSE OF ACTION 7 MONEY HAD AND RECEIVED

8 72. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
9 as if fully set forth herein.

10 73. As a result of the conduct described above, Defendants have been and may continue to be
11 unjustly enriched at the expense of the Plaintiff and the proposed Class. Specifically, Defendants'
12 unlawful, unfair, and fraudulent conduct have enabled Defendants to label, market, promote, distribute,
13 and sell a less expensive and falsely labeled Pinot Noir wine to Plaintiff and the proposed Class unjustly
14 enriching Defendants.

15 74. Defendant received the money of Plaintiff and the proposed for its falsely labeled Pinot
16 Noir wine. The money was intended for the purchase of Pinot Noir wine. Because the wine was not
17 Pinot Noir wine, but instead a less expensive vintage, Plaintiff and the proposed Class, did not the
18 receive the benefit of the purchase money. Defendants have not returned the money to Plaintiff and the
19 proposed Class.

20 75. It would be unjust and inequitable to allow Defendants to retain their ill gotten profits and
21 therefore should be required to disgorge profits unlawfully obtained.

22 RELIEF REQUESTED

23 WHEREFORE, Plaintiff prays for the following relief:

- 24 1. For compensatory damages for the purchase price of the falsely labeled wine purchased
25 by Plaintiff and each class member.
26 2. For restitution including an order disgorging profits obtained by Defendants for the
27 wrongful acts alleged herein.
28

1 3. For putative damages as may be proven.

2 4. For attorneys fees under California Code of Civil Procedure §1021.5 or other legal basis
3 as may be proven.

4 5. For costs of suit.

5 6. For such other relief as the court may deem appropriate.

6
7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands trial of their claims by jury to the extent authorized by law.

9
10 DATED: February 25, 2010

KINGSLEY & KINGSLEY, APC

11 By: 

12 ERIC B. KINGSLEY
13 BRIAN LEVINE
14 Attorneys for Plaintiffs
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): KINGSLEY & KINGSLEY, APC GEORGE R. KINGSLEY, ESQ. SBN-38022 ERIC B. KINGSLEY, ESQ. SBN-185123 BRIAN LEVINE, ESQ. SBN-251416 16133 VENTURA BLVD., SUITE 1200, ENCINO, CA 91436 TELEPHONE NO. (818) 990-8300 FAX NO. (818) 990-2903		FOR COURT USE ONLY FILED Los Angeles Superior Court FEB 25 2010 John A. Clarke, Executive Officer/Clerk By <u>SHAUNNA WESLEY</u> Deputy	
ATTORNEY FOR (Name): MARK ZELLER, PLAINTIFF SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES STREET ADDRESS: 111 NORTH HILL STREET MAILING ADDRESS: CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL DISTRICT		CASE NUMBER: BC432711 JUDGE: DEPT:	
CASE NAME: MARK ZELLER V. E & J GALLO WINERY, INC.; AIMERY SIEUR D'ARQUES; DUCASSE COMPANY			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort <input type="checkbox"/> Auto (22) <input type="checkbox"/> Uninsured motorist (46) Other PIPD/WD (Personal Injury/Property Damage/Wrongful Death) Tort <input type="checkbox"/> Asbestos (04) <input type="checkbox"/> Product liability (24) <input type="checkbox"/> Medical malpractice (45) <input type="checkbox"/> Other PI/DPD/WD (23) Non-PI/DPD/WD (Other) Tort <input checked="" type="checkbox"/> Business tort/unfair business practice (07) <input type="checkbox"/> Civil rights (08) <input type="checkbox"/> Defamation (13) <input checked="" type="checkbox"/> Fraud (16) <input type="checkbox"/> Intellectual property (19) <input type="checkbox"/> Professional negligence (25) <input type="checkbox"/> Other non-PI/DPD/WD tort (35) Employment <input type="checkbox"/> Wrongful termination (36) <input type="checkbox"/> Other employment (15)	Contract <input type="checkbox"/> Breach of contract/warranty (06) <input type="checkbox"/> Rule 3.740 collections (09) <input type="checkbox"/> Other collections (09) <input type="checkbox"/> Insurance coverage (18) <input type="checkbox"/> Other contract (37) Real Property <input type="checkbox"/> Eminent domain/Inverse condemnation (14) <input type="checkbox"/> Wrongful eviction (33) <input type="checkbox"/> Other real property (26) Unlawful Detainer <input type="checkbox"/> Commercial (31) <input type="checkbox"/> Residential (32) <input type="checkbox"/> Drugs (38) Judicial Review <input type="checkbox"/> Asset forfeiture (05) <input type="checkbox"/> Petition re: arbitration award (11) <input type="checkbox"/> Writ of mandate (02) <input type="checkbox"/> Other judicial review (39)	Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403) <input type="checkbox"/> Antitrust/Trade regulation (03) <input type="checkbox"/> Construction defect (10) <input type="checkbox"/> Mass tort (40) <input type="checkbox"/> Securities litigation (28) <input type="checkbox"/> Environmental/Toxic tort (30) <input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41) Enforcement of Judgment <input type="checkbox"/> Enforcement of judgment (20) Miscellaneous Civil Complaint <input type="checkbox"/> RICO (27) <input type="checkbox"/> Other complaint (not specified above) (42) Miscellaneous Civil Petition <input type="checkbox"/> Partnership and corporate governance (21) <input type="checkbox"/> Other petition (not specified above) (43)
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2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

a. <input type="checkbox"/> Large number of separately represented parties b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve c. <input type="checkbox"/> Substantial amount of documentary evidence	d. <input type="checkbox"/> Large number of witnesses e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court f. <input type="checkbox"/> Substantial postjudgment judicial supervision
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3. Remedies sought (check all that apply): a. ☒ monetary b. ☒ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): **SIX (6)**

5. This case ☒ is ☐ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: **FEBRUARY 25, 2010**
Brian Levine (TYPE OR PRINT NAME) [Signature] (SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check one box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the primary cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (48) (if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)

Other P/DPD/W (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (not asbestos or toxic/environmental) (24)
Medical Malpractice (45)
Medical Malpractice—Physicians & Surgeons
Other Professional Health Care Malpractice
Other P/DPD/W (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/W (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other P/DPD/W

Non-P/DPD/W (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (not civil harassment) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (not medical or legal)
Other Non-P/DPD/W Tort (35)
Employment
Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (not unlawful detainer or wrongful eviction)
Contract/Warranty Breach—Seller Plaintiff (not fraud or negligence)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (not provisionally complex) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (not eminent domain, landlord/tenant, or foreclosure)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)

Judicial Review

Asset Forfeiture (06)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (arising from provisionally complex case type listed above) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (non-domestic relations)
Sister State Judgment
Administrative Agency Award (not unpaid taxes)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (not specified above) (42)
Declaratory Relief Only
Injunctive Relief Only (non-harassment)
Mechanics Lien
Other Commercial Complaint Case (non-tort/non-complex)
Other Civil Complaint (non-tort/non-complex)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (not specified above) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief from Late Claim
Other Civil Petition

SHORT TITLE: MARK ZELLER V. E & J GALLO WINERY, INC.;
 AIMERY SIEUR D'ARQUES; DUCASSE COMPANY

CASE NUMBER

**CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION
 (CERTIFICATE OF GROUNDS FOR ASSIGNMENT TO COURTHOUSE LOCATION)**

This form is required pursuant to LASC Local Rule 2.0 in all new civil case filings in the Los Angeles Superior Court.

Item I. Check the types of hearing and fill in the estimated length of hearing expected for this case:

JURY TRIAL? ☒ YES CLASS ACTION? ☒ YES LIMITED CASE? ☐ YES TIME ESTIMATED FOR TRIAL 6-8 ☐ HOURS/ ☒ DAYS

Item II. Select the correct district and courthouse location (4 steps - If you checked "Limited Case", skip to Item III, Pg. 4):

Step 1: After first completing the Civil Case Cover Sheet Form, find the main civil case cover sheet heading for your case in the left margin below, and, to the right in Column A, the Civil Case Cover Sheet case type you selected.

Step 2: Check one Superior Court type of action in Column B below which best describes the nature of this case.

Step 3: In Column C, circle the reason for the court location choice that applies to the type of action you have checked.

For any exception to the court location, see Los Angeles Superior Court Local Rule 2.0.

Applicable Reasons for Choosing Courthouse Location (See Column C below)

1. Class Actions must be filed in the County Courthouse, Central District.
2. May be filed in Central (Other county, or no Bodily Injury/Property Damage).
3. Location where cause of action arose.
4. Location where bodily injury, death or damage occurred.
5. Location where performance required or defendant resides.
6. Location of property or permanently garaged vehicle.
7. Location where petitioner resides.
8. Location wherein defendant/respondent functions wholly.
9. Location where one or more of the parties reside.
10. Location of Labor Commissioner Office.

Step 4: Fill in the information requested on page 4 in Item III; complete Item IV. Sign the declaration.

	A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Auto Tort	Auto (22)	<input type="checkbox"/> A7100 Motor Vehicle - Personal Injury/Property Damage/Wrongful Death	1., 2., 4.
	Uninsured Motorist (46)	<input type="checkbox"/> A7110 Personal Injury/Property Damage/Wrongful Death - Uninsured Motorist	1., 2., 4.
Other Personal Injury/Property Damage/Wrongful Death Tort	Asbestos (04)	<input type="checkbox"/> A6070 Asbestos Property Damage	2.
		<input type="checkbox"/> A7221 Asbestos - Personal Injury/Wrongful Death	2.
	Product Liability (24)	<input type="checkbox"/> A7260 Product Liability (not asbestos or toxic/environmental)	1., 2., 3., 4., 8.
	Medical Malpractice (45)	<input type="checkbox"/> A7210 Medical Malpractice - Physicians & Surgeons	1., 2., 4.
		<input type="checkbox"/> A7240 Other Professional Health Care Malpractice	1., 2., 4.
Other Personal Injury Property Damage Wrongful Death (23)	<input type="checkbox"/> A7250 Premises Liability (e.g., slip and fall)	1., 2., 4.	
	<input type="checkbox"/> A7230 Intentional Bodily Injury/Property Damage/Wrongful Death (e.g., assault, vandalism, etc.)	1., 2., 4.	
	<input type="checkbox"/> A7270 Intentional Infliction of Emotional Distress	1., 2., 3.	
	<input type="checkbox"/> A7220 Other Personal Injury/Property Damage/Wrongful Death	1., 2., 4.	
Non-Personal Injury/Property Damage/Wrongful Death Tort	Business Tort (07)	<input checked="" type="checkbox"/> A6029 Other Commercial/Business Tort (not fraud/breach of contract)	① 2., 3.
	Civil Rights (08)	<input type="checkbox"/> A6005 Civil Rights/Discrimination	1., 2., 3.
	Defamation (13)	<input type="checkbox"/> A6010 Defamation (slander/libel)	1., 2., 3.
	Fraud (16)	<input checked="" type="checkbox"/> A6013 Fraud (no contract)	① 2., 3.

Non-Personal Injury/Property Damage/
Wrongful Death Tort (Cont'd.)

Employment

Contract

Real Property

Unlawful Detainer

Judicial Review

SHORT TITLE: MARK ZELLER V. B & J GALLO WINERY, INC.; AIMERY SIEUR D'ARQUES; DUCASSE COMPANY		CASE NUMBER
A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Professional Negligence (25)	<input type="checkbox"/> A6017 Legal Malpractice <input type="checkbox"/> A6050 Other Professional Malpractice (not medical or legal)	1., 2., 3. 1., 2., 3.
Other (35)	<input type="checkbox"/> A6025 Other Non-Personal Injury/Property Damage tort	2., 3.
Wrongful Termination (36)	<input type="checkbox"/> A6037 Wrongful Termination	1., 2., 3.
Other Employment (15)	<input type="checkbox"/> A6024 Other Employment Complaint Case <input type="checkbox"/> A6109 Labor Commissioner Appeals	1., 2., 3. 10.
Breach of Contract/ Warranty (06) (not insurance)	<input type="checkbox"/> A6004 Breach of Rental/Lease Contract (not Unlawful Detainer or wrongful eviction) <input type="checkbox"/> A6008 Contract/Warranty Breach -Seller Plaintiff (no fraud/negligence) <input type="checkbox"/> A6019 Negligent Breach of Contract/Warranty (no fraud) <input type="checkbox"/> A6028 Other Breach of Contract/Warranty (not fraud or negligence)	2., 5. 2., 5. 1., 2., 5. 1., 2., 5.
Collections (09)	<input type="checkbox"/> A6002 Collections Case-Seller Plaintiff <input type="checkbox"/> A6012 Other Promissory Note/Collections Case	2., 5., 8. 2., 5.
Insurance Coverage (18)	<input type="checkbox"/> A6015 Insurance Coverage (not complex)	1., 2., 5., 8.
Other Contract (37)	<input type="checkbox"/> A6009 Contractual Fraud <input type="checkbox"/> A6031 Tortious Interference <input type="checkbox"/> A6027 Other Contract Dispute(not breach/insurance/fraud/negligence)	1., 2., 3., 5. 1., 2., 3., 5. 1., 2., 3., 8.
Eminent Domain/Inverse Condemnation (14)	<input type="checkbox"/> A7300 Eminent Domain/Condemnation Number of parcels _____	2.
Wrongful Eviction (33)	<input type="checkbox"/> A6023 Wrongful Eviction Case	2., 6.
Other Real Property (26)	<input type="checkbox"/> A6018 Mortgage Foreclosure <input type="checkbox"/> A6032 Quiet Title <input type="checkbox"/> A6060 Other Real Property (not eminent domain, landlord/tenant, foreclosure)	2., 6. 2., 6. 2., 6.
Unlawful Detainer - Commercial (31)	<input type="checkbox"/> A6021 Unlawful Detainer-Commercial (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Residential (32)	<input type="checkbox"/> A6020 Unlawful Detainer-Residential (not drugs or wrongful eviction)	2., 6.
Unlawful Detainer - Drugs (38)	<input type="checkbox"/> A6022 Unlawful Detainer-Drugs	2., 6.
Asset Forfeiture (05)	<input type="checkbox"/> A6108 Asset Forfeiture Case	2., 6.
Petition re Arbitration (11)	<input type="checkbox"/> A6115 Petition to Compel/Confirm/Vacate Arbitration	2., 5.

SHORT TITLE: MARK ZELLER V. E & J GALLO WINERY, INC.;
AIMERY SIEUR D'ARQUES; DUCASSE COMPANY

CASE NUMBER

A Civil Case Cover Sheet Category No.	B Type of Action (Check only one)	C Applicable Reasons - See Step 3 Above
Writ of Mandate (02)	<input type="checkbox"/> A6151 Writ - Administrative Mandamus	2., 8.
	<input type="checkbox"/> A6152 Writ - Mandamus on Limited Court Case Matter	2.
	<input type="checkbox"/> A6153 Writ - Other Limited Court Case Review	2.
Other Judicial Review (39)	<input type="checkbox"/> A6150 Other Writ / Judicial Review	2., 8.
Antitrust/Trade Regulation (03)	<input type="checkbox"/> A6003 Antitrust/Trade Regulation	1., 2., 8.
Construction Defect (10)	<input type="checkbox"/> A6007 Construction defect	1., 2., 3.
Claims Involving Mass Tort (40)	<input type="checkbox"/> A6008 Claims Involving Mass Tort	1., 2., 8.
Securities Litigation (28)	<input type="checkbox"/> A6035 Securities Litigation Case	1., 2., 8.
Toxic Tort Environmental (30)	<input type="checkbox"/> A6036 Toxic Tort/Environmental	1., 2., 3., 8.
Insurance Coverage Claims from Complex Case (41)	<input type="checkbox"/> A6014 Insurance Coverage/Subrogation (complex case only)	1., 2., 5., 8.
Enforcement of Judgment (20)	<input type="checkbox"/> A6141 Sister State Judgment	2., 9.
	<input type="checkbox"/> A6160 Abstract of Judgment	2., 6.
	<input type="checkbox"/> A6107 Confession of Judgment (non-domestic relations)	2., 9.
	<input type="checkbox"/> A6140 Administrative Agency Award (not unpaid taxes)	2., 8.
	<input type="checkbox"/> A6114 Petition/Certificate for Entry of Judgment on Unpaid Tax	2., 8.
	<input type="checkbox"/> A6112 Other Enforcement of Judgment Case	2., 8., 9.
RICO (27)	<input type="checkbox"/> A6033 Racketeering (RICO) Case	1., 2., 8.
Other Complaints (Not Specified Above) (42)	<input type="checkbox"/> A6030 Declaratory Relief Only	1., 2., 8.
	<input type="checkbox"/> A6040 Injunctive Relief Only (not domestic/harassment)	2., 8.
	<input type="checkbox"/> A6011 Other Commercial Complaint Case (non-tort/non-complex)	1., 2., 8.
	<input type="checkbox"/> A6000 Other Civil Complaint (non-tort/non-complex)	1., 2., 8.
Partnership Corporation Governance (21)	<input type="checkbox"/> A6113 Partnership and Corporate Governance Case	2., 8.
Other Petitions (Not Specified Above) (43)	<input type="checkbox"/> A6121 Civil Harassment	2., 3., 9.
	<input type="checkbox"/> A6123 Workplace Harassment	2., 3., 9.
	<input type="checkbox"/> A6124 Elder/Dependent Adult Abuse Case	2., 3., 9.
	<input type="checkbox"/> A6190 Election Contest	2.
	<input type="checkbox"/> A6110 Petition for Change of Name	2., 7.
	<input type="checkbox"/> A6170 Petition for Relief from Late Claim Law	2., 3., 4., 8.
	<input type="checkbox"/> A6100 Other Civil Petition	2., 9.

SHORT TITLE: MARK ZELLER V. E & J GALLO WINERY, INC.; AIMERY SIEUR D'ARQUES; DUCASSE COMPANY	CASE NUMBER
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Item III. Statement of Location: Enter the address of the accident, party's residence or place of business, performance, or other circumstance indicated in Item II., Step 3 on Page 1, as the proper reason for filing in the court location you selected.

REASON: CHECK THE NUMBER UNDER COLUMN C WHICH APPLIES IN THIS CASE <input checked="" type="checkbox"/> 1. <input type="checkbox"/> 2. <input type="checkbox"/> 3. <input type="checkbox"/> 4. <input type="checkbox"/> 5. <input type="checkbox"/> 6. <input type="checkbox"/> 7. <input type="checkbox"/> 8. <input type="checkbox"/> 9. <input type="checkbox"/> 10.			ADDRESS: CORPORATE ADDRESS: 600 YOSEMITE BOULEVARD
CITY: MODESTO	STATE: CA	ZIP CODE: 95353	CLASS ACTION TO BE FILED IN CENTRAL

Item IV. Declaration of Assignment: I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that the above-entitled matter is properly filed for assignment to the SUPERIOR COURT courthouse in the CENTRAL District of the Los Angeles Superior Court (Code Civ. Proc., § 392 et seq., and LASC Local Rule 2.0, subs. (b), (c) and (d)).

KINGSLEY & KINGSLEY, APC

Dated: FEBRUARY 25, 2010


(SIGNATURE OF ATTORNEY/FILING PARTY)
BRIAN LEVINE

PLEASE HAVE THE FOLLOWING ITEMS COMPLETED AND READY TO BE FILED IN ORDER TO PROPERLY COMMENCE YOUR NEW COURT CASE:

1. Original Complaint or Petition.
2. If filing a Complaint, a completed Summons form for issuance by the Clerk.
3. Civil Case Cover Sheet form CM-010.
4. Complete Addendum to Civil Case Cover Sheet form LACIV 109 (Rev 01/07), LASC Approved 03-04.
5. Payment in full of the filing fee, unless fees have been waived.
6. Signed order appointing the Guardian ad Litem, JC form FL-935, if the plaintiff or petitioner is a minor under 18 years of age, or if required by Court.
7. Additional copies of documents to be conformed by the Clerk. Copies of the cover sheet and this addendum must be served along with the summons and complaint, or other initiating pleading in the case.

EXHIBIT B

Case Summary

Please make a note of the Case Number.

[Click here to access document images for this case.](#)

If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Case Number: BC432711

MARK ZELLER VS E & J GALLO WINERY INC ET AL

Filing Date: 02/25/2010

Case Type: Other Commercial/Business Tort (General Jurisdiction)

Status: Pending

Future Hearings

10/27/2010 at 01:30 pm in department 322 at 600 South Commonwealth Ave.,
Los Angeles, CA 90005
Further Status Conference

[Documents Filed](#) | [Proceeding Information](#)

Parties

AIMERY SIEUR D'ARQUES - Defendant/Respondent

BINGHAM MCCUTCHEN LLP - Atty for Defendant and Cross-Compl

DOES 1 TO 50 - Defendant/Respondent

DUCASSE COMPANY - Defendant/Respondent

E & J GALLO WINERY INC. - Defendant and Cross-Complainant

KINGSLEY ERIC B. ESQ. - Attorney for Plaintiff/Petitioner

ROPES & GRAY LLP - Attorney for Deft/Respnt

ZELLER MARK - Plaintiff/Petitioner

[Case Information](#) | [Party Information](#) | [Proceeding Information](#)

Please make a note of the Case Number.

[Click here to access document images for this case.](#)

If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Documents Filed (Filing dates listed in descending order)

08/10/2010 Order (ORDER AUTHORIZING ELECTRONIC SERVICE (Case Anywhere))
Filed by Court

08/03/2010 Report-Status (joint initial status conference report)
Filed by Attorney for Pltf/Petr

06/24/2010 Notice of Continuance (of initial status conference)
Filed by Attorney for Pltf/Petr

06/17/2010 Notice (of special appearance and request for continuance of initial status conference)
Filed by Attorney for Deft/Respnt

06/07/2010 Cross-complaint
Filed by Atty for Defendant and Cross-Compl

06/07/2010 Answer to First Amended Complaint
Filed by Attorney for Deft/Respnt

05/26/2010 Notice of Continuance (OF INITIAL STATUS CONFERENCE)
Filed by Attorney for Plaintiff/Petitioner

05/25/2010 Ntc and Acknowledgement of Receipt
Filed by Attorney for Pltf/Petr

04/29/2010 Notice (of posting complex fees pursuant to order deeming case complex)
Filed by Attorney for Pltf/Petr

04/27/2010 Notice (of initial status conference)
Filed by Attorney for Pltf/Petr

04/20/2010 Ntc of Unpaid Filing Fees (complex fee Mark Zeller)
Filed by Clerk

04/13/2010 Summons Filed
Filed by Attorney for Plaintiff/Petitioner

04/13/2010 First Amended Complaint (CLASS ACTION COMPLAINT)
Filed by Attorney for Plaintiff/Petitioner

04/12/2010 Notice (RE 170.6 CCP RE-ASSIGNMENT)
Filed by Attorney for Plaintiff/Petitioner

04/07/2010 Notice (of peremptory challenge acceptance)
Filed by Attorney for Pltf/Petr

03/26/2010 Affidavit of Prejudice--Peremptory
Filed by Attorney for Plaintiff/Petitioner

03/25/2010 Notice-Related Cases (BC434173)
Filed by Attorney for Pltf/Petnr

03/25/2010 Order - Other (Initial Status Conf.)
Filed by Court

02/25/2010 Complaint

[Case Information](#) | [Party Information](#) | [Documents Filed](#)

Proceedings Held (Proceeding dates listed in descending order)

05/26/2010 at 08:30 am in Department 322, Carl J. West, Presiding
Court Order - **Completed**

03/29/2010 at 02:30 pm in Department 323, Carolyn B. Kuhl, Presiding
Affidavit of Prejudice - **Case is reassigned**

03/19/2010 at 08:30 am in Department 311, Carl J. West, Presiding
Court Order - **Court makes order**

[Case Information](#) | [Party Information](#) | [Documents Filed](#) | [Proceeding Information](#)

PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City and County of Los Angeles, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is 555 West 5th Street, 46th Floor, Los Angeles, CA 90013. On October 22, 2010, I served the following document(s):

**DECLARATION OF SARAH E. ANDRE IN SUPPORT OF OBJECTION OF
CONSTELLATION BRANDS, INC. AND CONSTELLATION WINES U.S., INC. TO
COURT'S DESIGNATION OF CASE AS NON-COMPLEX**

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

X: By First-Class Mail — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

___: By Personal Service — I caused each such envelope to be given to a courier messenger to personally deliver to the office of the addressee.

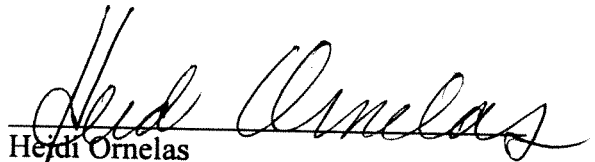
___: By Overnight Courier — I caused each such envelope to be given to an overnight mail service at Los Angeles, California, to be hand delivered to the office of the addressee on the next business day.

___: By Facsimile — From facsimile number (213) 629-6001, I caused each such document to be transmitted by facsimile machine, to the parties and numbers listed below, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine.

Addressee(s):

Please see attached list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 22, 2010, at Los Angeles, California.


Heidi Ornelas

SERVICE LIST**Zeller v. Constellation Brands, et al.
Los Angeles Superior Case No. BC443338**

Eric B. Kingsley, Esq. Brian Levine, Esq. Kelsey Peterson-More, Esq. KINGSLEY & KINGSLEY, APC 16133 Ventura Boulevard, Suite 1200 Encino, CA 91436	Attorneys for Plaintiffs Tel: 818-990-8300 Fax 818-990-2903 Emails: eric@kingsleykingsley.com; blevine@kingsleykingsley.com; kelsey@kingsleykingsley.com
Michael A. Caddell, Esq. Cynthia B. Chapman, Esq. Cory S. Fein, Esq. CADDELL & CHAPMAN 1331 Lamar, Suite 1070 Houston, TX 77010	Attorneys for Plaintiffs Tel: 713-751-0400 Fax: 713-751-0906 Emails: mac@caddellchapman.com; cbc@caddellchapman.com; csf@caddellchapman.com
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Rocky C. Tsai, Esq. Thad A. Davis, Esq. ROPES & GRAY LLP Three Embarcadero Center San Francisco, CA 94111-4006	Attorneys for SDA Entities Tel: 415-315-6300 Fax: 415-315-6350 Emails:

COPY**ORIGINAL FILED**
OCT 22 2010
LOS ANGELES
SUPERIOR COURT

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16 Attorneys for Defendants

17 CONSTELLATION BRANDS, INC. and

18 CONSTELLATION WINES U.S., INC.

19
20 SUPERIOR COURT OF THE STATE OF CALIFORNIA21
22 COUNTY OF LOS ANGELES23 MARK ZELLER, on behalf of himself and others
24 similarly situated,

25 Plaintiff,

26 v.

27 CONSTELLATION BRANDS, INC.;
28 CONSTELLATION WINES U.S., INC.; SICA
CAVES DU SIEUR D'ARQUES; AIMERY
SIEUR D'ARQUES; VIGNERON DU SIEUR
D'ARQUES; DOMAINE ET VIGNOBLE DU
SUD, formerly known as Société Ducasse; and
DOES 1 to 50 Inclusive,

Defendants.

Case No. BC443338

**OBJECTION OF CONSTELLATION
BRANDS, INC. AND CONSTELLATION
WINES U.S., INC. TO COURT'S
DESIGNATION OF CASE AS NON-
COMPLEX, IN RESPONSE TO
INVITATION OF COURT**

Dept. 324

Hon. Emilie H. Elias

Complaint Filed: August 10, 2010

Trial Date: None Set

**OBJECTION TO COURT'S DESIGNATION OF CASE AS
NON-COMPLEX; CASE NO. BC443338**

13208996.2

Pursuant to California Rule of Court 3.400, and in timely response to the October 12, 2010, service of the Court's September 3, 2010, minute order, defendants Constellation Brands, Inc. and Constellation Wines U.S., Inc. (collectively "Constellation Defendants") respectfully object to the Court's determination that this case is non-complex. The basis for this Objection is that the legal and factual issues presented in the Complaint are extremely complex and time consuming to litigate. The treatment of this case as complex will facilitate a speedier, less expensive, less burdensome, and more efficient solution.

I. THIS OBJECTION IS TIMELY

The action was commenced on August 10, 2010. On September 3, 2010, before the Constellation Defendants had been served with a copy of the Complaint, this court (Hon. Emile H. Elias) issued a minute order which designated the case as non-complex. The Minute Order further provided that "Any party objecting to the non-complex designation must file an objection . . . in Department 324 *within ten (10) days of service of this minute order.*" (Emphasis added.) The Minute order directed Plaintiff Mark Zeller to serve a copy of the minute order on all parties forthwith.

The Constellation Defendants were not served with the Summons and Complaint or this Court's minute order until October 12, 2010. As a result, the Constellation Defendants now timely object in response to this Court's minute order of September 3, 2010.

II. UNDERLYING FACTS AND THE RELATED *ZELLER V. GALLO* ACTION

Plaintiff affirmatively represented on his civil cover sheet that this case is not complex pursuant to Rule 3.400 of the California Rules of Court. The face of the Complaint, however, reveals just the contrary: a complex case with numerous challenging issues and questions, the resolution of which requires the special judicial management afforded by the complex department's rules and guidelines.

This is a putative class action brought by Plaintiff on behalf of "[a]ll residents of the United States who purchased one or more bottles of 2005, 2006, 2007, or 2008 Constellation Brand wine labeled as 'Pinot Noir' ('Proposed Class')." (Complaint ¶ 49.) The Complaint alleges that the various defendants "labeled, marketed, and sold millions of bottles labeled as "Pinot Noir" . . . and

1 that these bottles of wine were “illegally cut with cheaper Syrah and Merlot grapes.” (Complaint ¶
2 2.)

3 Plaintiff estimates that the number of alleged class members is “at least tens of thousands.”
4 (Complaint ¶ 51.) Over the four-year class period, these class members may, or may not, have
5 purchased one, or more bottles of wine from one or more of the Constellation Defendants portfolio of
6 wine labels, which include the following popular U.S. brands alleged by Plaintiff: Woodbridge by
7 Robert Mondavi, Clos du Bois, Black Box, Robert Mondavi Private Selection, Ravenswood,
8 Blackstone, Toasted Head, Franciscan Estate, Mount Veeder Winery, Robert Mondavi Winery, Simi,
9 Estancia, Hogue, and Rex Goliath. Plaintiff asserts that “at least hundreds of thousands of bottles . . .
10 “labeled as “Pinot Noir” were sold nationwide.” (Complaint ¶ 51.)

11 The Complaint contains eight (8) purported causes of action for: (1) violation of California
12 Business and Professions Code § 17200 et seq. (unfair competition); (2) violation of California
13 Business and Professions Code § 17200 et seq. (false advertising); (3) fraud; (4) fraudulent
14 concealment and nondisclosure; (5) negligent misrepresentation; (6) express warranty; (7) breach of
15 the implied covenant of good faith and fair dealing; and (8) money had and received.

16 Significantly, his Court has already recognized a similar class action by this same Plaintiff,
17 *Zeller v. E. & J. Gallo Winery*, Case No. BC 432711 (Complaint filed April 13, 2010)(“*Zeller v.*
18 *Gallo*”), as complex. (Declaration of Sarah E. André, Exhibits A and B.)

19 The resolution of Plaintiff’s many causes of action, particularly fraud and fraudulent
20 concealment which, by law, are fact specific to each plaintiff, may well require a significant amount
21 of motion practice and discovery. There will likely be discovery and substantial dispute on the issue
22 of class certification. And while the Constellation Defendants believe that no class could be certified,
23 if a class is certified, hundreds of depositions, voluminous document production, and a large volume
24 of written discovery, are likely to take place. In addition, if a class is certified, there may be special
25 need for court-supervised judicial administration of processes unique to class actions. Moreover, in
26 the event of class certification, and should the Constellation Defendants’ contemplated motions for
27 decertification be denied, the Court might be called on to supervise post-trial or post-settlement class
28 claims. This is best handled within complex guidelines with expansive judicial discretion.

III. THIS ACTION IS "COMPLEX" UNDER THE CALIFORNIA RULES OF COURT

In general, "complex" cases are those that "require[] specialized management to avoid placing unnecessary burdens on the court or the litigants." *First State Ins. Co. v. Superior Ct.*, 79 Cal. App. 4th 324, 332 (Cal. Ct. App. 2000) (quotation and citation omitted). The factors a court should consider in making such a designation include, "among other things, whether the action is likely to involve":

- (1) Numerous pretrial motions raising difficult or novel legal issues that will be time-consuming to resolve;
- (2) Management of a large number of witnesses or a substantial amount of documentary evidence;
- (3) Management of a large number of separately represented parties;
- (4) Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court; or
- (5) Substantial postjudgment judicial supervision.

Cal. R. Ct. 3.400(b). A majority of these factors require designation of this action as "complex."

Application of these factors to this case requires that it be designated as "complex."

A. *This Case May Well Involve Numerous Pretrial Motions Raising Difficult Issues*

This case may well involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve. Without exhausting all of the likely motions, they would include at least the following: (1) a demurrer for misjoinder, (2) a *forum non conveniens* motion, (3) a motion for judgment on the pleadings and/or summary adjudication, (4) a motion by Plaintiff for class certification and papers from the Constellation Defendants challenging any such motion, and, if necessary, (5) a motion to de-certify the class.

Further, the need for complex case treatment becomes even more compelling given the extremely large number of parties at issue – suggested by Plaintiff to be "at least tens of thousands." Indeed, with more than 10,000 "residents" purported to be class members and the different combinations of claims, issues, and evidence relating to them, complex treatment is essential. *See, e.g., Cottle v. Superior Court*, 3 Cal. App. 4th 1367, 1372 (Cal. Ct. App. 1992) (designating a case as "complex" when it involved approximately forty plaintiffs suing for allegedly similar damages due to

1 toxic waste disposal); *First State Ins. Co.*, 79 Cal. App. 4th at 327 (designating a case involving
2 approximately sixty parties as “complex”).

3 ***B. This Case Will Require Management of a Large Number of Experts, Witnesses,***
4 ***and a Substantial Amount of Documentary Evidence***

5 If Plaintiff’s claims survive earlier motions, and if the Court allows the range of discovery
6 Plaintiff will most likely demand on his novel liability theories, this case is likely to involve a large
7 number of witnesses, documents and electronic discovery, both domestically and in France. Indeed,
8 with tens of thousands of potential plaintiffs, each of which is differently situated, there will be
9 unique and challenging issues.¹

10 The majority of the named defendants (Sica Caves Du Sieur D’Arques; Aimery Sieur
11 D’Arques; Vigneron Du Sieur D’Arques; Domaine Et Vignoble Du Sud, formerly known as Société
12 Ducasse (collectively the “French Defendants”)) are French entities. The French Defendants will
13 likely challenge whether this Court has jurisdiction. Discovery (communications, contracts, reports,
14 etc.) relating to the French Defendants is likely to be located in France and in the French language.
15 In addition, significant discovery in this action will involve past and ongoing civil and criminal
16 litigation in France. These court documents, along with other discovery from France, will require
17 translation – an expensive and time-consuming process.

18 Plaintiff’s discovery could involve a large number of documents and witnesses related to
19 Defendants’ operations all over the United States and France. Without conceding the validity or
20 admissibility of their approach, Plaintiff’s theory of the case would call into question the business
21 relationships and practices of the various defendants over a period of over four years and involve: (1)
22 communications between the Constellation Defendants and the Alcohol, Tobacco Tax and Trade
23 Bureau (“TTB”) regarding the Pinot Noir at issue and document provided to the TTB in this regard;
24 (2) documents and information provided to the Constellation Defendants by the French Defendants
25 regarding the authenticity of the Pinot Noir; (3) documents and information regarding the sale,
26

27 ¹ Even preliminary discovery for purposes of class certification will create many of these issues.
28

1 distribution and prices of the Pinot Noir at issue; (4) evidence regarding whether Plaintiff and the
 2 purported class were damaged as a result of the alleged conduct; and (5) evidence relating to the
 3 allegations in the Complaint regarding the commonality, numerosity, and typicality of the claims.

4 Discovery relating to liability is likely to require expert testimony from enologists, chemists,
 5 and other scientists regarding wine composition and characterization. Witnesses will also be
 6 necessary, and are likely to come from all over this country and from France.

7 Discovery on alleged damages could involve records of sales for a period exceeding four
 8 years from the French Defendants, from the Constellation Defendants, and from French and United
 9 States vendors and distributors who are not part of this action. Moreover, retrieval and translation
 10 (into English) of numerous agreements, contracts, e-mails, and other communications between the
 11 Constellation Defendants and the French Defendants is likely to be expensive and time-consuming.
 12 The Court will also be required to examine privacy issues regarding all of the above issues and the
 13 proper amount of cost-shifting to plaintiff and his counsel for resolution of the above issues and/or
 14 production of such information by the Constellation Defendants. Potential discovery likely will run
 15 into the tens of thousands of pages, separate and apart from electronic discovery. In short, this case
 16 already promises to be paper-intensive for any court with responsibility for its adjudication.

17 The potential plaintiffs' geographic dispersion across the country will exacerbate the potential
 18 problems that will arise with such discovery. The actions and events alleged to have caused injury in
 19 this case are not specific to California. Rather, an injury is alleged to have occurred when a
 20 "resident[] of the United States purchased one or more bottles" of the Pinot Noir at issue. (Complaint
 21 ¶ 49.) Thus, class members – and discovery relating to them – could be almost anywhere (and
 22 everywhere) in the United States.

23 Discovery is also highly likely to involve experts. Collectively, these are precisely the kinds
 24 of problems where treatment as a "complex" case may "facilitate pretrial resolution of evidentiary
 25 and other issues" *First State Ins. Co.*, 79 Cal. App. 4th at 333 (quoting *Asbestos Claims*
 26 *Facility v. Berry & Berry*, 219 Cal. App. 3d 9, 14 (Cal. Ct. App. 1990)).

27 Perhaps most telling is this fact that this Court has already recognized the related *Zeller v.*
 28 *Gallo* action as complex. The Plaintiff in *Zeller v. Gallo*, Mr. Zeller, is also the named plaintiff in

1 this case, and the *Zeller v. Gallo* complaint relies on many of the same facts and legal theories at
 2 issue in this case. (André Decl., Exh. A.) Similar to the allegations in this case, Mr. Zeller purports
 3 to represent a nationwide class of plaintiffs in connection with allegedly mislabeled Pinot Noir
 4 supplied by E.&J. Gallo and several of the French Defendants. (André Decl., Exh. A.) Recognizing
 5 that the *Zeller v. Gallo* class action involves significant motion practice and discovery challenges, the
 6 court designated the matter complex. (André Decl., Exh. B.) For the same reasons, the Constellation
 7 Defendants request that this Court designate the instant action as complex.

8 IV. CONCLUSION

9 For the reasons set forth above, the Constellation Defendants respectfully request entry of an
 10 order, as soon as practicable, designating this case as complex under Rule 3.400.

11
 12 DATED: October 22, 2010

Respectfully submitted,

NIXON PEABODY LLP

By: 

Sarah E. André (State Bar No. 236145)

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Attorneys for Defendants
 CONSTELLATION BRANDS, INC. and
 CONSTELLATION WINES U.S., INC.

PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City and County of Los Angeles, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is 555 West 5th Street, 46th Floor, Los Angeles, CA 90013. On October 22, 2010, I served the following document(s):

**OBJECTION OF CONSTELLATION BRANDS, INC. AND CONSTELLATION WINES
U.S., INC. TO COURT'S DESIGNATION OF CASE AS NON-COMPLEX, IN RESPONSE
TO INVITATION OF COURT**

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

X: By First-Class Mail — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

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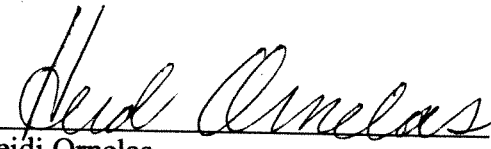
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Addressee(s):

Please see attached list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on October 22, 2010, at Los Angeles, California.


Heidi Ornelas

SERVICE LIST**Zeller v. Constellation Brands, et al.
Los Angeles Superior Case No. BC443338**

Eric B. Kingsley, Esq. Brian Levine, Esq. Kelsey Peterson-More, Esq. KINGSLEY & KINGSLEY, APC 16133 Ventura Boulevard, Suite 1200 Encino, CA 91436	Attorneys for Plaintiffs Tel: 818-990-8300 Fax 818-990-2903 Emails: eric@kingsleykingsley.com; blevine@kingsleykingsley.com; kelsey@kingsleykingsley.com
Michael A. Caddell, Esq. Cynthia B. Chapman, Esq. Cory S. Fein, Esq. CADDELL & CHAPMAN 1331 Lamar, Suite 1070 Houston, TX 77010	Attorneys for Plaintiffs Tel: 713-751-0400 Fax: 713-751-0906 Emails: mac@caddellchapman.com; cbc@caddellchapman.com; csf@caddellchapman.com
Peter M. Brody, Esq. ROPES & GRAY LLP One Metro Center 700 12th Street NW, Suite 900 Washington, DC 20005-3948	Attorneys for SDA Entities Tel: 202-508-4600 Fax: 202-508-4650 Emails:
Rocky C. Tsai, Esq. Thad A. Davis, Esq. ROPES & GRAY LLP Three Embarcadero Center San Francisco, CA 94111-4006	Attorneys for SDA Entities Tel: 415-315-6300 Fax: 415-315-6350 Emails:

ORIGINAL

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) ERIC B. KINGSLEY, ESQ. KINGSLEY & KINGSLEY, APC. 16133 VENTURA BLVD 1200 ENCINO, CA 91436-2416 TELEPHONE NO.: (818) 990-8300 E-MAIL ADDRESS: ATTORNEY FOR: PLAINTIFF		SBN 185123 FAX NO: (818) 990-2903 FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES OCT 26 2010 John A. Clark, Deputy Deputy By GEORGETTA K. RICHMOND Case Number:	
LOS ANGELES SUPERIOR COURT/CENTRAL (UNLIMITED) STREET ADDRESS: 111 N HILL ST MAILING ADDRESS: 111 N HILL ST CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL		BC443338	
PLAINTIFF/PETITIONER: MARK ZELLER DEFENDANT/RESPONDENT: CONSTELLATION BRANDS, INC.		Ref. No. or File No.: D-71	
PROOF OF SERVICE OF SUMMONS			

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of: **SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION; CIVIL CASE COVER SHEET; NOTICE OF CASE ASSIGNMENT; SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE; NOTICE OF NON-COMPLEX DESIGNATION AND REASSIGNMENT; NATURE OF PROCEEDINGS**
3. a. Party served: **CONSTELLATION WINES U.S., INC.**
 b. Person served: **MARIA SANCHEZ - AGENT FOR SERVICE OF PROCESS @ CT CORPORATION**
4. Address where the party was served: **818 W 7TH ST 2ND FL, LOS ANGELES CA 90017-3407**
5. I served the party
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **Oct, 12 2010** (2) at (time): **2:40 PM**
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 d. On behalf of:
CONSTELLATION WINES U.S., INC.
 under the following Code of Civil Procedure section: **CCP 416.10 (corporation)**
7. Person who served papers
 a. Name: **MARCEL SANCHEZ - ATTORNEY RELATED SERVICES, INC.**
 b. Address: **15335 MORRISON ST STE 104, SHERMAN OAKS, CA. 91403-1566**
 c. Telephone number: **(818) 995-9771**
 d. The fee for service was: \$ **37.00**
 e. I am: (3) registered California process server:
 (i) Employee or independent contractor
 (ii) Registration No.: **EMP OF 281 (S. RAHEB)**
 (iii) County: **VENTURA**

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) ERIC B. KINGSLEY, ESQ. KINGSLEY & KINGSLEY, APC. 16133 VENTURA BLVD 1200 ENCINO, CA 91436-2416 TELEPHONE NO.: (818) 990-8300 FAX NO: (818) 990-2903 E-MAIL ADDRESS: ATTORNEY FOR: PLAINTIFF	FOR COURT USE ONLY
LOS ANGELES SUPERIOR COURT/CENTRAL (UNLIMITED) STREET ADDRESS: 111 N HILL ST MAILING ADDRESS: 111 N HILL ST CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL	
PLAINTIFF/PETITIONER: MARK ZELLER DEFENDANT/RESPONDENT: CONSTELLATION BRANDS, INC.	Case Number: BC443338
PROOF OF SERVICE OF SUMMONS	Ref No or File No.:

(Separate proof of service is required for each party served.)

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 21, 2010

MARCEL SANCHEZ

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

ORIGINAL

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) ERIC B. KINGSLEY, ESQ. SBN 185123 KINGSLEY & KINGSLEY, APC. 16133 VENTURA BLVD 1200 ENCINO, CA 91436-2416 TELEPHONE NO.: (818) 990-8300 FAX NO. (818) 990-2903 E-MAIL ADDRESS: ATTORNEY FOR: PLAINTIFF	FOR COURT USE ONLY FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF LOS ANGELES OCT 26 2010 John A. [Signature] Executive Officer/Clerk By <u>[Signature]</u> GLORIBETTA ROBINSON Deputy
LOS ANGELES SUPERIOR COURT/CENTRAL (UNLIMITED) STREET ADDRESS: 111 N HILL ST MAILING ADDRESS: 111 N HILL ST CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL	
PLAINTIFF/PETITIONER: MARK ZELLER DEFENDANT/RESPONDENT: CONSTELLATION BRANDS, INC.	Case Number: BC443338
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.: D-71

(Separate proof of service is required for each party served.)

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of: **SUMMONS; COMPLAINT; CIVIL CASE COVER SHEET ADDENDUM AND STATEMENT OF LOCATION; CIVIL CASE COVER SHEET; NOTICE OF CASE ASSIGNMENT; SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES ALTERNATIVE DISPUTE RESOLUTION (ADR) INFORMATION PACKAGE; NOTICE OF NON-COMPLEX DESIGNATION AND REASSIGNMENT; NATURE OF PROCEEDINGS**
3. a. Party served: **CONSTELLATION BRANDS, INC.**
 b. Person served: **MARIA SANCHEZ - AGENT FOR SERVICE OF PROCESS @ CT CORPORATION**
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5. I served the party
 a. by personal service. I personally delivered the documents listed in item 2 to the party or person authorized to receive service of process for the party (1) on (date): **Oct, 12 2010** (2) at (time): **2:40 PM**
6. The "Notice to the Person Served" (on the summons) was completed as follows:
 d. On behalf of:
CONSTELLATION BRANDS, INC.
 under the following Code of Civil Procedure section: **CCP 416.10 (corporation)**
7. Person who served papers
 a. Name: **MARCEL SANCHEZ - ATTORNEY RELATED SERVICES, INC.**
 b. Address: **15335 MORRISON ST STE 104, SHERMAN OAKS, CA. 91403-1566**
 c. Telephone number: **(818) 995-9771**
 d. The fee for service was: \$ **42.00**
 e. I am: (3) registered California process server:
 (i) Employee or independent contractor
 (ii) Registration No.: **EMP OF 281 (S. RAHEB)**
 (iii) County: **VENTURA**

POS-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address) ERIC B. KINGSLEY, ESQ. SBN 185123 KINGSLEY & KINGSLEY, APC. 16133 VENTURA BLVD 1200 ENCINO, CA 91436-2416 TELEPHONE NO.: (818) 990-8300 FAX NO: (818) 990-2903 E-MAIL ADDRESS: ATTORNEY FOR: PLAINTIFF	FOR COURT USE ONLY
LOS ANGELES SUPERIOR COURT/CENTRAL (UNLIMITED) STREET ADDRESS: 111 N HILL ST MAILING ADDRESS: 111 N HILL ST CITY AND ZIP CODE: LOS ANGELES, CA 90012 BRANCH NAME: CENTRAL	
PLAINTIFF/PETITIONER: MARK ZELLER DEFENDANT/RESPONDENT: CONSTELLATION BRANDS, INC.	Case Number: BC443338
PROOF OF SERVICE OF SUMMONS	Ref. No. or File No.:

(Separate proof of service is required for each party served.)

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: October 21, 2010

MARCEL SANCHEZ

(NAME OF PERSON WHO SERVED PAPERS/SHERIFF OR MARSHAL)



(SIGNATURE)

COPY**BY FAX**

CONFORMED COPY
ORIGINAL FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF LOS ANGELES

NOV 01 2010

John A. Clarke, Executive Officer/Clerk
 BY [Signature] Deputy
 Glorietta Robinson

1 Sarah E. André (State Bar No. 236145)

2 sandre@nixonpeabody.com

3 NIXON PEABODY LLP

4 Gas Company Tower

5 555 West Fifth Street, 46th Floor

6 Los Angeles, California 90013

7 Phone: (213) 629-6000

8 Facsimile: (213) 629-6001

9 Bruce E. Copeland (State Bar No. 124888)

10 bcopeland@nixonpeabody.com

11 NIXON PEABODY LLP

12 One Embarcadero Center

13 San Francisco, California 94111

14 Phone: (415) 984-8200

15 Facsimile: (213) 983-8300

16 Attorneys for Defendants

17 CONSTELLATION BRANDS, INC. and

18 CONSTELLATION WINES U.S., INC.

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF LOS ANGELES

21 MARK ZELLER, on behalf of himself and others
 22 similarly situated,

23 Plaintiff,

24 v.

25 CONSTELLATION BRANDS, INC.;
 26 CONSTELLATION WINES U.S., INC.; SICA
 27 CAVES DU SIEUR D'ARQUES; AIMERY
 28 SIEUR D'ARQUES; VIGNERON DU SIEUR
 D'ARQUES; DOMAINE ET VIGNOBLE DU
 SUD, formerly known as Société Ducasse; and
 DOES 1 to 50 Inclusive,

Defendants.

Case No. BC443338

**PEREMPTORY CHALLENGE BY
 DEFENDANTS CONSTELLATION BRANDS,
 INC. AND CONSTELLATION WINES U.S.,
 INC. PURSUANT TO C.C.P. SECTION 170.6;
 DECLARATION OF SARAH E. ANDRÉ IN
 SUPPORT THEREOF**

[Assigned for all purposes to the Honorable Judge
 Soussan G. Bruguera)

Complaint filed: August 10, 2010

Trial Date: None

**PEREMPTORY CHALLENGE BY DEFENDANTS
 CONSTELLATION BRANDS, INC. AND CONSTELLATION
 WINES U.S., INC. PURSUANT TO C.C.P. SECTION 170.6;
 DECLARATION OF SARAH E. ANDRE IN SUPPORT
 THEREOF; CASE NO. BC443338**

13202520.1

1
2 TO ALL PARTIES AND TO THEIR RESPECTIVE ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that pursuant to *Code of Civil Procedure* § 170.6, Defendants
4 Constellation Brands, Inc., and Constellation Wines U.S., Inc. (the "Constellation Defendants")
5 hereby file their peremptory challenge to the assignment of the Honorable Judge Soussan G.
6 Bruguera to the above-entitled matter. The Constellation Defendants are entitled to make this
7 peremptory challenge at this time because they did not receive notice of the assignment of this matter
8 to Judge Bruguera until October 12, 2010, and they made there first appearance in this matter on
9 October 22, 2010.

10
11 This peremptory challenged is supported by the Declaration of Sarah E. André.

12
13 DATED: November 1, 2010

Respectfully submitted,

14 NIXON PEABODY LLP

15 By: 

Sarah E. André (State Bar No. 236145)

sandre@nixonpeabody.com

16 NIXON PEABODY LLP

17 Gas Company Tower

18 555 West Fifth St., 46th Floor

19 Los Angeles, CA 90013

Telephone: (213) 629-6000

20 Facsimile: (213) 629-6001

21 Attorneys for Defendants
22 CONSTELLATION BRANDS, INC. and
23 CONSTELLATION WINES U.S., INC.

DECLARATION OF SARAH E. ANDRÉ

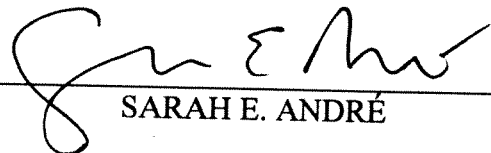
I, Sarah E. André, declare as follows:

1. I am an attorney-at-law, duly licensed to practice in the state of California, and an associate of the firm of Nixon Peabody LLP, counsel for Defendants Constellation Brands, Inc., and Constellation Wines U.S., Inc. (the "Constellation Defendants"). As such, I am personally familiar with this action and have personal knowledge of the facts set forth herein and could competently testify thereto.

2. I submit this declaration for purposes of a motion under Code of Civil Procedure § 170.6 only. Consistent with the practices and procedures under that statute, I am informed and believe that the Honorable Judge Soussan G. Bruguera, to whom this action is assigned, is prejudiced against the Constellation Defendants and the interests of the Constellation Defendants so that the Constellation Defendants cannot or believe they cannot have a fair and impartial hearing of the matters associated with this action.

I declare under penalty of perjury under the laws of California that the foregoing is true and correct.

Executed on November 1, 2010 at Los Angeles, California.


SARAH E. ANDRÉ

PROOF OF SERVICE

I, the undersigned, certify that I am employed in the City and County of Los Angeles, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is 555 West 5th Street, 46th Floor, Los Angeles, CA 90013. On November 1, 2010, I served the following document(s):

**PEREMPTORY CHALLENGE BY DEFENDANTS CONSTELLATION BRANDS, INC.
AND CONSTELLATION WINES U.S., INC. PURSUANT TO C.C.P. SECTION 170.6;
DECLARATION OF SARAH E. ANDRÉ IN SUPPORT THEREOF**

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

X: By First-Class Mail — I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

___: By Personal Service — I caused each such envelope to be given to a courier messenger to personally deliver to the office of the addressee.

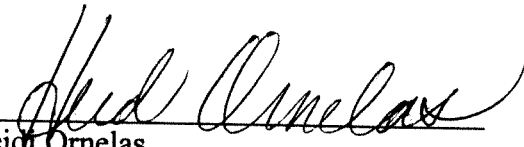
___: By Overnight Courier — I caused each such envelope to be given to an overnight mail service at Los Angeles, California, to be hand delivered to the office of the addressee on the next business day.

___: By Facsimile — From facsimile number (213) 629-6001, I caused each such document to be transmitted by facsimile machine, to the parties and numbers listed below, pursuant to Rule 2008. The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine.

Addressee(s):

Please see attached list.

I declare under penalty of perjury that the foregoing is true and correct. Executed on November 1, 2010, at Los Angeles, California.


Heidi Ornelas

SERVICE LIST**Zeller v. Constellation Brands, et al.
Los Angeles Superior Case No. BC443338**

Eric B. Kingsley, Esq. Brian Levine, Esq. Kelsey Peterson-More, Esq. KINGSLEY & KINGSLEY, APC 16133 Ventura Boulevard, Suite 1200 Encino, CA 91436	Attorneys for Plaintiffs Tel: 818-990-8300 Fax 818-990-2903 Emails: eric@kingsleykingsley.com; blevine@kingsleykingsley.com; kelsey@kingsleykingsley.com
Michael A. Caddell, Esq. Cynthia B. Chapman, Esq. Cory S. Fein, Esq. CADDELL & CHAPMAN 1331 Lamar, Suite 1070 Houston, TX 77010	Attorneys for Plaintiffs Tel: 713-751-0400 Fax: 713-751-0906 Emails: mac@caddellchapman.com; cbc@caddellchapman.com; csf@caddellchapman.com
Peter M. Brody, Esq. ROPES & GRAY LLP One Metro Center 700 12th Street NW, Suite 900 Washington, DC 20005-3948	Attorneys for SDA Entities Tel: 202-508-4600 Fax: 202-508-4650 Emails:
Rocky C. Tsai, Esq. Thad A. Davis, Esq. ROPES & GRAY LLP Three Embarcadero Center San Francisco, CA 94111-4006	Attorneys for SDA Entities Tel: 415-315-6300 Fax: 415-315-6350 Emails:

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/02/10

DEPT. 71

HONORABLE Soussan G. Bruguera

JUDGE

K. TOLLACK

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. HERNAND, C.A.

Deputy Sheriff

NONE

Reporter

3:30 pm

BC443338

Plaintiff

NO APPEARANCE

Counsel

MARK ZELLER

VS

Defendant

NO APPEARANCE

CONSTELLATION BRANDS INC ET AL

Counsel

NATURE OF PROCEEDINGS:

PEREMPTORY CHALLENGE PURSUANT TO CODE OF CIVIL
PROCEDURE SECTION 170.6

Counsel for defendants Constellation Brands, Inc. and Constellation Wines U.S., Inc. filed a peremptory challenge pursuant to Code of Civil Procedure Section 170.6 on November 1, 2010. The Court, finding it to be in proper format and timely filed, accepts the peremptory challenge.

This case is ordered transferred forthwith to Department 1 for reassignment. All matters now on calendar in Department 71 are advanced to this date and are placed off-calendar.

Moving party to give notice.

CLERK'S CERTIFICATE OF MAILING/

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served a copy of the above minute order of 11-2-10 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Page 1 of 2 DEPT. 71

MINUTES ENTERED 11/02/10 COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 11/02/10

DEPT. 71

HONORABLE Soussan G. Bruguera

JUDGE

K. TOLLACK

DEPUTY CLERK

HONORABLE

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

J. HERNAND, C.A.

Deputy Sheriff

NONE

Reporter

3:30 pm

BC443338

Plaintiff
Counsel

NO APPEARANCE

MARK ZELLER

VS

Defendant
Counsel

NO APPEARANCE

CONSTELLATION BRANDS INC ET AL

NATURE OF PROCEEDINGS:

Date: November 2, 2010

John A. Clarke, Executive Officer/Clerk

By:

K TOLLACK

K. TOLLACK

Nixon Peabody
 Attn: Sarah E. Andre
 555 West Fifth Street, 46th Floor
 Los Angeles, California 90013

EXHIBIT C

Case Summary

Please make a note of the Case Number.

[Click here to access document images for this case.](#)

If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Case Number: BC443338

MARK ZELLER VS CONSTELLATION BRANDS INC ET AL

Filing Date: 08/10/2010

Case Type: Other Commercial/Business Tort (General Jurisdiction)

Status: Pending

Future Hearings

None

[Documents Filed](#) | [Proceeding Information](#)

Parties

CADDLE MICHAEL A. - Attorney for Plaintiff/Petitioner

CONSTELLATION BRANDS INC. - Defendant/Respondent

CONSTELLATION WINES U.S. INC. - Defendant/Respondent

DOES 1 TO 50 - Defendant/Respondent

DU SIEUR D'ARQUES SICA CAVES - Defendant/Respondent

DU SIEUR D'ARQUES VIGNERON - Defendant/Respondent

KINGSLEY ERIC B. ESQ. - Attorney for Plaintiff/Petitioner

NIXON PEABOCY LLP [L.A.] - Attorney for Defendant/Respondent

NIXON PEABODY LLP - Attorney for Defendant/Respondent

NIXON PEABODY LLP [SAN FRANCISCO] - Defendant/Respondent

SIEUR D'ARQUES AIMERY - Defendant/Respondent

SU SUD DOMAINE ET VIGNOBLE - Defendant/Respondent

ZELLER MARK - Plaintiff/Petitioner

[Case Information](#) | [Party Information](#) | [Proceeding Information](#)

Please make a note of the Case Number.

[Click here to access document images for this case.](#)

If this link fails, you may go to the Case Document Images site and search using the case number displayed on this page.

Documents Filed (Filing dates listed in descending order)

11/01/2010 CCP 170.6 Application Filed
Filed by Attorney for Defendant/Respondent

10/26/2010 Proof of Service
Filed by Attorney for Plaintiff/Petitioner

10/26/2010 Proof-Service/Summons
Filed by Attorney for Pltfr/Petnr

10/22/2010 Objection Document (OBJ OF CONSTELLATION BRANDS, INC. & CONSTELLATION WINES U.S., INC. TO COURTS DESIGNATION OF CASE AS NON-COMPLEX, IN RESPONSE TO INVITATION OF COURT)
Filed by Attorney for Defendant/Respondent

10/22/2010 Declaration (DECL OF SARAH E. ANDRE ISO OBJ OF DEFT TO COURT'S DESIGNATION OF CASE AS NON-COMPLEX)
Filed by Attorney for Defendant/Respondent

09/17/2010 Notice (OF NON-COMPLEX)
Filed by Attorney for Plaintiff/Petitioner

08/10/2010 Complaint

[Case Information](#) | [Party Information](#) | [Documents Filed](#)

Proceedings Held (Proceeding dates listed in descending order)

11/08/2010 at 01:38 pm in Department 1, ELIHU M. BERLE, Presiding
Order Re: Reassignment of Case (170.6 DEFT) - **Transferred to different department**

11/02/2010 at 03:30 pm in Department 71, Soussan G. Bruguera, Presiding
Affidavit of Prejudice - **Granted**

09/03/2010 at 08:30 am in Department 324, Emilie H. Elias, Presiding
Court Order - **Court makes order**

[Case Information](#) | [Party Information](#) | [Documents Filed](#) | [Proceeding Information](#)

CERTIFICATE OF SERVICE

I, the undersigned, certify that I am employed in the City and County of Los Angeles, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is Gas Company Tower, 555 West Fifth Street, Suite 4600, Los Angeles, California 90013 (213) 629-6000. On November 10, 2010, I served the following document(s):

**NOTICE OF REMOVAL OF CIVIL ACTION FROM STATE COURT
PURSUANT TO 28 U.S.C. §§ 1332, 1441 AND 1446**

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

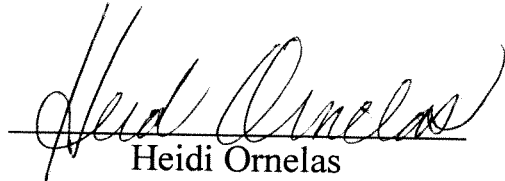
X: By First-Class United States Mail – I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

Addressee(s)

See attached Service List

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 10, 2010, at Los Angeles, California.


Heidi Ornelas

SERVICE LIST

Zeller v. Constellation Brands, et al.
United States District Court, Central District
Case No.: _____

Eric B. Kingsley, Esq.
Brian Levine, Esq.

Attorneys for Plaintiffs

Kelsey Peterson-More, Esq.
KINGSLEY & KINGSLEY, APC
16133 Ventura Boulevard, Suite 1200
Encino, CA 91436

Tel: 818-990-8300
Fax 818-990-2903
Emails: eric@kingsleykingsley.com;
blevine@kingsleykingsley.com;
kelsey@kingsleykingsley.com

Michael A. Caddell, Esq.
Cynthia B. Chapman, Esq.
Cory S. Fein, Esq.
CADDELL & CHAPMAN
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Houston, TX 77010

Attorneys for Plaintiffs

Tel: 713-751-0400
Fax: 713-751-0906
Emails: mac@caddellchapman.com;
cbc@caddellchapman.com;
csf@caddellchapman.com

Peter M. Brody, Esq.
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One Metro Center
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Washington, DC 20005-3948

Attorneys for SDA Entities

Tel: 202-508-4600
Fax: 202-508-4650
Emails:

Rocky C. Tsai, Esq.
Thad A. Davis, Esq.
ROPES & GRAY LLP
Three Embarcadero Center
San Francisco, CA 94111-4006

Attorneys for SDA Entities

Tel: 415-315-6300
Fax: 415-315-6350
Emails:

COPY

I. PLAINTIFFS (Check box if you are representing yourself ☐)
 MARK ZELLER, on behalf of himself and others similarly situated

DEFENDANTS
 CONSTELLATION BRANDS, INC.; CONSTELLATION WINES U.S., INC.; SICA CAVES DU SIEUR D'ARQUES; AIMERY SIEUR D'ARQUES; VIGNERON DU SIEUR D'ARQUES; DOMAINE ET VIGNOBLE DU SUD, formerly known as Société Ducasse; and Does 1 through 50, Inclusive

Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.)
 Eric B. Kingsley
 KINGSLEY & KINGSLEY, APC
 16133 Ventura Blvd, Suite 1200
 Encino, CA 91436
 818-990-8300

Attorneys (If Known)
 Thaddeus J. Stauber
 Bruce E. Copeland
 NIXON PEABODY LLP
 555 West Fifth Street, 46th Floor
 Los Angeles, CA 90013
 213-629-6000

II. BASIS OF JURISDICTION (Place an X in one box only.)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
☐ 2 U.S. Government Defendant ☒ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only
 (Place an X in one box for plaintiff and one for defendant.)

	PTF	DEF		PTF	DEF
Citizen of This State	<input checked="" type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. ORIGIN (Place an X in one box only.)

- ☐ 1 Original Proceeding ☒ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify): ☐ 6 Multi-District Litigation ☐ 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: ☒ Yes ☐ No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: ☒ Yes ☐ No

☐ **MONEY DEMANDED IN COMPLAINT: \$**

VI. CAUSE OF ACTION (Cite the U. S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)
 Violation of California Business and Professions Codes

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment	<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> 310 Airplane	<input checked="" type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus	<input type="checkbox"/> 710 Fair Labor Standards Act
<input type="checkbox"/> 410 Antitrust	<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 530 General	<input type="checkbox"/> 720 Labor/Mgmt. Relations
<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act
<input type="checkbox"/> 450 Commerce/ICC Rates/etc.	<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 330 Fed. Employers' Liability	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 540 Mandamus/Other	<input type="checkbox"/> 740 Railway Labor Act
<input type="checkbox"/> 460 Deportation	<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 340 Marine	BANKRUPTCY	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 790 Other Labor Litigation
<input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations	<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 22 Appeal 28 USC 158	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 791 Empl. Ret. Inc. Security Act
<input type="checkbox"/> 480 Consumer Credit	<input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans)	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 423 Withdrawal 28 USC 157	FORFEITURE / PENALTY	PROPERTY RIGHTS
<input type="checkbox"/> 490 Cable/Sat TV	<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	CIVIL RIGHTS	<input type="checkbox"/> 610 Agriculture	<input type="checkbox"/> 820 Copyrights
<input type="checkbox"/> 810 Selective Service	<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 620 Other Food & Drug	<input type="checkbox"/> 830 Patent
<input type="checkbox"/> 850 Securities/Commodities/Exchange	<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 362 Personal Injury-Med Malpractice	<input type="checkbox"/> 443 Housing/Accommodations	<input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881	<input type="checkbox"/> 840 Trademark
<input type="checkbox"/> 875 Customer Challenge 12 USC 3410	<input type="checkbox"/> 195 Contract Product Liability	<input type="checkbox"/> 365 Personal Injury-Product Liability	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 630 Liquor Laws	SOCIAL SECURITY
<input type="checkbox"/> 890 Other Statutory Actions	<input type="checkbox"/> 196 Franchise	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 445 American with Disabilities - Employment	<input type="checkbox"/> 640 R.R. & Truck	<input type="checkbox"/> 61 HIA (1395ff)
<input type="checkbox"/> 891 Agricultural Act	REAL PROPERTY	IMMIGRATION	<input type="checkbox"/> 446 American with Disabilities - Other	<input type="checkbox"/> 650 Airline Regs	<input type="checkbox"/> 862 Black Lung (923)
<input type="checkbox"/> 892 Economic Stabilization Act	<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 462 Naturalization Application	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 660 Occupational Safety /Health	<input type="checkbox"/> 863 DIWC/DIWW 405(g)
<input type="checkbox"/> 893 Environmental Matters	<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 463 Habeas Corpus-Alien Detainee		<input type="checkbox"/> 690 Other	<input type="checkbox"/> 864 SSID Title XVI
<input type="checkbox"/> 894 Energy Allocation Act	<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 465 Other Immigration Actions			<input type="checkbox"/> 865 RS1 (405(g))
<input type="checkbox"/> 895 Freedom of Info. Act	<input type="checkbox"/> 240 Torts to Land				FEDERAL TAX SUITS
<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice	<input type="checkbox"/> 245 Tort Product Liability				<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)
<input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 290 All Other Real Property				<input type="checkbox"/> 871 IRS-Third Party 26 USC 7609

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☒ No ☐ Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☒ No ☐ Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☐ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Mark Zeller, Los Angeles County	

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☐ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

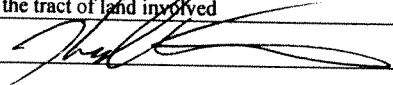
County in this District:*	California County outside of this District; State, if other than California; or Foreign Country														
	<table> <tr> <td>Constellation Brands, Inc.</td><td>Deleware and New York</td></tr> <tr> <td>Constellation Wines U.S., Inc.</td><td>New York</td></tr> <tr> <td>SICA Caves Du Sieur D'Arques</td><td>France</td></tr> <tr> <td>Aimery Sieur D'Arques</td><td>France</td></tr> <tr> <td>Vigneron Du Sieur D'Arques</td><td>France</td></tr> <tr> <td>Domaine Et Vignoble Du Sud,</td><td>France</td></tr> <tr> <td>formerly known as Société Ducasse</td><td></td></tr> </table>	Constellation Brands, Inc.	Deleware and New York	Constellation Wines U.S., Inc.	New York	SICA Caves Du Sieur D'Arques	France	Aimery Sieur D'Arques	France	Vigneron Du Sieur D'Arques	France	Domaine Et Vignoble Du Sud,	France	formerly known as Société Ducasse	
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- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles County	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date November 10 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3 -1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

CERTIFICATE OF SERVICE

I, the undersigned, certify that I am employed in the City and County of Los Angeles, California; that I am over the age of eighteen years and not a party to the within action; and that my business address is Gas Company Tower, 555 West Fifth Street, Suite 4600, Los Angeles, California 90013 (213) 629-6000. On November 10, 2010, I served the following document(s):

CIVIL COVER SHEET

on the parties stated below, through their attorneys of record, by placing true copies thereof in sealed envelopes addressed as shown below by the following means of service:

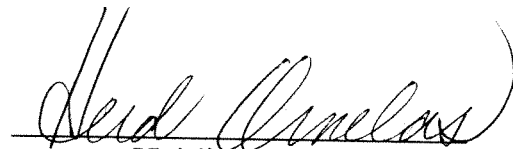
X: By First-Class United States Mail – I am readily familiar with the firm's practice for collection and processing of correspondence for mailing. Under that practice, the correspondence is deposited with the United States Postal Service on the same day as collected, with first-class postage thereon fully prepaid, in Los Angeles, California, for mailing to the office of the addressee following ordinary business practices.

Addressee(s)

See attached Service List

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on November 10, 2010, at Los Angeles, California.


Heidi Ornelas

SERVICE LIST

Zeller v. Constellation Brands, et al.
United States District Court, Central District
Case No.: _____

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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Christina A. Snyder and the assigned discovery Magistrate Judge is Victor B. Kenton.

The case number on all documents filed with the Court should read as follows:

CV10- 8601 CAS (VBKx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

===== :
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☒ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☐ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.